

Introduced by

Legislative Management

(Judiciary Committee)

1 A BILL for an Act to amend and reenact subsection 1 of section 12.1-23-09, subsection 6 of
2 section 13-04.1-09.2, sections 14-03-01, 14-03-08, 14-05-06, 14-05-18, 14-07-01, 14-07-03,
3 14-07-04, 14-07-06, 14-07-07, 14-07-08, 14-07-12, 14-07-13, and 14-07-14, subsection 9 of
4 section 14-12.2-28, subsection 4 of section 14-14.1-30, sections 14-15-03, 14-15-20, 14-18-08,
5 and 20.1-03-06, subsections 8, 29, and 32 of section 20.1-03-12, subdivision b of subsection 1
6 of section 30.1-10-04, sections 35-01-04, 47-18-04, 47-18-05, 47-18-14, and 50-25.1-10,
7 subsection 3 of section 54-52.4-02, subsection 2 of section 57-38-31, subsection 5 of section
8 57-40.3-04, section 57-40.3-07, and subsection 3 of section 57-40.5-03 of the North Dakota
9 Century Code, relating to the definition of marriage and the recognition of marital relationships.

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

11 **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-23-09 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 1. It is a defense to a prosecution under this chapter that:
- 14 a. The actor reasonably believed ~~that~~ the actor had a claim to the property or
15 services involved which the actor was entitled to assert in the manner which
16 forms the basis for the charge against the actor; or
- 17 b. The victim is the actor's spouse, but only when the property involved constitutes
18 household or personal effects or other property normally accessible to both
19 spouses and the parties involved are living together. The term "spouse", as used
20 in this section, includes ~~persons~~individuals living together as ~~husband and~~
21 ~~wife~~who are married to each other.

22 **SECTION 2. AMENDMENT.** Subsection 6 of section 13-04.1-09.2 of the North Dakota
23 Century Code is amended and reenacted as follows:

1 6. A licensee may not induce or permit any person, or ~~husband and wife~~two individuals
2 married to each other, jointly or severally, to be obligated, directly or indirectly, under
3 more than one contract of loan at the same time if the multiple loans result in a higher
4 rate of charge than would otherwise be permitted by this chapter.

5 **SECTION 3. AMENDMENT.** Section 14-03-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-03-01. What constitutes marriage - Spouse defined.**

8 Marriage is a personal relation arising out of a civil contract between ~~one man and one~~
9 ~~woman~~two individuals to which the consent of the parties is essential. The marriage relation
10 may be entered into, maintained, annulled, or dissolved only as provided by law. A spouse
11 ~~refers only to a person of the opposite sex~~to an individual who is a ~~husband or a wife~~one of two
12 individuals married to each other.

13 **SECTION 4. AMENDMENT.** Section 14-03-08 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **14-03-08. Foreign marriages recognized - Exception.**

16 Except when residents of this state contract a marriage in another state which is prohibited
17 under the laws of this state, all marriages contracted outside this state, which are valid
18 according to the laws of the state or country where contracted, are valid in this state. ~~This~~
19 ~~section applies only to a marriage contracted in another state or country which is between one~~
20 ~~man and one woman as husband and wife.~~

21 **SECTION 5. AMENDMENT.** Section 14-05-06 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **14-05-06. Desertion defined.**

24 Willful desertion is the voluntary separation of one of the married parties from the other with
25 intent to desert:

26 1. Persistent refusal to have reasonable matrimonial intercourse as ~~husband and wife~~two
27 individuals married to each other when health or physical condition does not make
28 suchthe refusal reasonably necessary, or the refusal of either party to dwell in the
29 same house with the other party when there is no just cause for suchthe refusal, is
30 desertion.

- 1 2. When one party is induced by the stratagem or fraud of the other party to leave the
2 family dwelling place or to be absent, and during ~~such~~that absence the offending party
3 departs with intent to desert the other, it is desertion by the party committing the
4 stratagem or fraud and not by the other.
- 5 3. Departure or absence of one party from the family dwelling place caused by cruelty or
6 by threats of bodily harm from which danger reasonably would be apprehended from
7 the other is not desertion by the absent party, but it is desertion by the other party.
- 8 4. Separation by consent, with or without the understanding that one of the parties will
9 apply for a divorce, is not desertion.
- 10 5. Absence or separation, proper in itself, becomes desertion whenever the intent to
11 desert is fixed during such absence or separation.
- 12 6. Consent to a separation is a revocable act, and if one of the parties afterwards in good
13 faith seeks a reconciliation and restoration but the other refuses it, such refusal is
14 desertion.
- 15 7. If one party deserts the other and before the expiration of the statutory period required
16 to make the desertion a cause of divorce returns and offers in good faith to fulfill the
17 marriage contract and solicits condonation, the desertion is cured. If the other party
18 refuses ~~such~~the offer and condonation, the refusal must be deemed and treated as
19 desertion by ~~such~~that party from the time of the refusal.

20 **SECTION 6. AMENDMENT.** Section 14-05-18 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **14-05-18. Presumption of domicile.**

23 In actions for divorce, the presumption of law that the domicile of ~~the husband~~one spouse is
24 the domicile of the ~~wife~~other spouse does not apply. After separation, each party may have a
25 separate domicile, depending for proof upon actual residence and not upon legal presumptions.

26 **SECTION 7. AMENDMENT.** Section 14-07-01 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **14-07-01. Mutual obligations.**

29 ~~Husband and wife~~Two individuals married to each other contract toward each other
30 obligations of mutual respect, fidelity, and support.

1 **SECTION 8. AMENDMENT.** Section 14-07-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **14-07-03. Duty to support.**

4 ~~The husband and wife~~Two individuals married to each other have a mutual duty to support
5 each other out of their individual property and labor.

6 **SECTION 9. AMENDMENT.** Section 14-07-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **14-07-04. Separate property - Rights and privileges.**

9 Except as otherwise provided by section 14-07-03, neither ~~the husband nor the wife~~spouse
10 has any interest in the property of the other spouse, but neither can be excluded from the
11 other's dwelling.

12 **SECTION 10. AMENDMENT.** Section 14-07-06 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **14-07-06. Contracts between husband and wifespouses and third persons as to**
15 **property.**

16 Either ~~husband or wife~~spouse may enter into any engagement or transaction with the other
17 spouse or with other persons respecting property which either might enter into if unmarried.

18 **SECTION 11. AMENDMENT.** Section 14-07-07 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **14-07-07. Contracts to alter marital relations.**

21 ~~A husband and wife cannot~~Two individuals married to each other may not by any contract
22 with each other alter their marital relations, except ~~that they~~the spouses may agree in writing to
23 an immediate separation and may make provision for the support of either of ~~them~~spouse and
24 of their children during ~~such~~the separation. The mutual consent of the parties is a sufficient
25 consideration for ~~such a~~the separation agreement.

26 **SECTION 12. AMENDMENT.** Section 14-07-08 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **14-07-08. Separate and mutual rights and liabilities of ~~husband and wifespouses~~.**

29 The separate and mutual rights and liabilities of ~~a husband and a wife~~two individuals
30 married to each other are as follows:

- 1 1. ~~Neither the husband nor the wife as such~~spouse is answerable for the acts of the
2 other.
- 3 2. Except for necessary expenses as provided in subsection 3, the earnings of one
4 spouse are not liable for the debts of the other spouse, and the earnings and
5 accumulations of either spouse and of any minor children living with either spouse or
6 in one spouse's custody, while the ~~husband and wife~~spouses are living separate from
7 each other, are the separate property of each spouse.
- 8 3. ~~The husband and wife are~~Each spouse is liable jointly and severally for any debts
9 contracted by either, while living together, for necessary household supplies of food,
10 clothing, and fuel, medical care, and for shelter for themselves and family, and for the
11 education of their minor children.
- 12 4. The separate property of ~~the husband or wife~~one spouse is not liable for the debts of
13 the other spouse but each is liable for their own debts contracted before or after
14 marriage.

15 **SECTION 13. AMENDMENT.** Section 14-07-12 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **14-07-12. Transfer of property when abandoned or imprisoned.**

18 ~~In case the husband or wife~~if one spouse abandons the other and removes from the state
19 and is absent ~~therefrom~~from the state for one year without providing for the maintenance and
20 support of that ~~person's~~spouse's family, or is sentenced to imprisonment either in the county jail
21 or penitentiary for the period of one year or more, the district court of the county where the
22 ~~husband or wife~~spouse so abandoned or not in prison resides, on application by affidavit of
23 ~~such husband or wife~~the abandoned spouse fully setting forth the facts and supported by
24 ~~such~~any other testimony as the court may deem necessary, may authorize ~~that person~~the
25 abandoned spouse to manage, control, sell, or encumber the property of the ~~husband or~~
26 ~~wife~~other spouse for the support and maintenance of the family and for the purpose of paying
27 debts contracted ~~prior to such~~before the abandonment or imprisonment. Notice of ~~such~~the
28 proceedings must be given to the opposite party and must be served as a summons is served
29 in ordinary actions.

30 **SECTION 14. AMENDMENT.** Section 14-07-13 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **14-07-13. Contracts made under power given by court binding on both parties.**

2 All contracts, sales, or encumbrances made by either ~~by the husband or the wifespouse~~ by
3 virtue of the power contemplated and granted by order of the court as provided in section
4 14-07-12 are binding on both spouses, and during ~~such~~the absence or imprisonment, the
5 person acting under ~~such~~that power may sue and be sued thereon. For all acts done, the
6 property of both parties is liable, and execution may be levied or attachment issued thereon
7 according to statute. No suit or proceedings may abate or in anywise be affected by the return
8 or release of the person confined, but that person may be permitted to prosecute or defend
9 jointly with the other.

10 **SECTION 15. AMENDMENT.** Section 14-07-14 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **14-07-14. When order for transfer may be set aside.**

13 The ~~husband or wifespouse~~ affected by the proceedings contemplated in sections 14-07-12
14 and 14-07-13 may have the order or decree of the court set aside or annulled by affidavit of
15 ~~such~~that party, setting forth fully the facts and supported by ~~such~~any other testimony as the
16 court ~~shall deem~~deems proper. Notice of proceedings to set aside and annul the order must be
17 given the person in whose favor the same was granted and must be served as a summons is
18 served in an ordinary action. The setting aside of the decree or order in no way affects any act
19 done thereunder.

20 **SECTION 16. AMENDMENT.** Subsection 9 of section 14-12.2-28 of the North Dakota
21 Century Code is amended and reenacted as follows:

22 9. The defense of immunity based on the spousal relationship ~~of husband and wife~~ or the
23 parent and child relationship does not apply in a proceeding under this chapter.

24 **SECTION 17. AMENDMENT.** Subsection 4 of section 14-14.1-30 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 4. A privilege against disclosure of communications between spouses and a defense of
27 immunity based on the spousal relationship ~~of husband and wife~~ or the parent and
28 child relationship may not be invoked in a proceeding under sections 14-14.1-22
29 through 14-14.1-37.

30 **SECTION 18. AMENDMENT.** Section 14-15-03 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **14-15-03. Who may adopt.**

2 The following individuals may adopt:

- 3 1. ~~A husband and wife~~Both spouses in a marriage together although one or both are
4 minors.
- 5 2. An unmarried adult.
- 6 3. The unmarried father or mother of the individual to be adopted.
- 7 4. A married individual without the other spouse joining as a petitioner, if the individual to
8 be adopted is not the adopting ~~person's~~individual's spouse, and if:
- 9 a. The petitioner is a stepparent of the individual to be adopted and the biological or
10 legal parent of the individual to be adopted consents;
- 11 b. The petitioner and the other spouse are legally separated; or
- 12 c. The failure of the other spouse to join in the petition or to consent to the adoption
13 is excused by the court by reason of prolonged unexplained absence,
14 unavailability, incapacity, or circumstances constituting an unreasonable
15 withholding of consent.

16 **SECTION 19. AMENDMENT.** Section 14-15-20 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **14-15-20. Adoption and legitimation by conduct.**

19 Notwithstanding the other provisions of this chapter, the biological father of an illegitimate
20 minor adopts and legitimates a minor by publicly acknowledging the minor as that man's child,
21 receiving the minor into that man's home, with the consent of that man's ~~wife~~spouse, if that man
22 is married, and otherwise treating the minor as if the minor were legitimate. Thereafter, the
23 minor is deemed the legitimate child of the father for all purposes from the time of birth of the
24 minor, the same as if the adoption had been finally decreed pursuant to this chapter.

25 **SECTION 20. AMENDMENT.** Section 14-18-08 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **14-18-08. Gestational carrier agreements.**

28 A child born to a gestational carrier is a child of the intended parents for all purposes and is
29 not a child of the gestational carrier and the gestational carrier's ~~husband~~spouse, if any.

30 **SECTION 21. AMENDMENT.** Section 20.1-03-06 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **20.1-03-06. Contents of resident general game, fur-bearer, or fishing licenses -**

2 **Licenses not transferable - Resident family fishing license.**

3 1. A resident general game, fur-bearer, or fishing license is not transferable. Each such
4 license shall ~~shall~~ must:

5 1. a. Describe the licensee.

6 2. b. Designate the licensee's place of residence.

7 3. c. Have printed upon it in large figures the year for which it is issued, or if it is a
8 fur-bearer license, the statement that it expires on the first day of September
9 following the date of issue.

10 4. d. Have printed upon it in large letters the word "nontransferable".

11 5. e. Be issued in the name of the director.

12 2. In addition to the regular resident fishing license, there is hereby authorized a resident
13 family fishing license allowing the ~~husband and wife of a family~~ two individuals married
14 to each other to fish under one license. ~~Such license shall be~~ The family fishing license
15 is valid for the same period as other resident fishing licenses and shall be issued in
16 duplicate. ~~The husband and wife are each to~~ Each spouse shall have a copy in
17 possession while fishing.

18 **SECTION 22. AMENDMENT.** Subsections 8, 29, and 32 of section 20.1-03-12 of the North
19 Dakota Century Code are amended and reenacted as follows:

20 8. For a resident ~~husband and wife~~ fishing license for two individuals married to each
21 other, twenty-two dollars.

22 29. For a resident ~~husband and wife~~ frog license for two individuals married to each other,
23 five dollars.

24 32. For a nonresident ~~husband and wife~~ fishing license for two individuals married to each
25 other, sixty dollars.

26 **SECTION 23. AMENDMENT.** Subdivision b of subsection 1 of section 30.1-10-04 of the
27 North Dakota Century Code is amended and reenacted as follows:

28 b. "Divorce or annulment" means any divorce or annulment, or any dissolution or
29 declaration of invalidity of a marriage, ~~that~~ which would exclude the spouse as a
30 surviving spouse within the meaning of section 30.1-10-02. A decree of

1 separation ~~that~~which does not terminate the status of ~~husband and wife~~being
2 married to one's spouse is not a divorce for purposes of this section.

3 **SECTION 24. AMENDMENT.** Section 35-01-04 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **35-01-04. Creation of lien by contract or by operation of law - Special circumstances**
6 **and exception.**

7 A lien or security interest is created by contract or by operation of law. No lien arises by
8 operation of law until the time at which the act secured by the lien is to be performed. A security
9 interest in personal property is governed by chapter 41-09, except that a bill of sale or security
10 agreement, that is not a purchase money security interest, with respect to household goods,
11 effects, furniture of married persons, or personal property exempt from execution is void unless
12 the instrument by which it is transferred or encumbered is jointly executed by ~~the husband and~~
13 ~~wife~~two individuals married to each other, if both are living. This section does not apply to
14 transfers or liens arising by operation of law nor to security agreements relating to threshed
15 grains made with any lending agency authorized to make commodity credit corporation loans on
16 threshed grains.

17 **SECTION 25. AMENDMENT.** Section 47-18-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **47-18-04. When homestead subject to execution.**

20 A homestead is subject to execution or forced sale in satisfaction of judgments obtained in
21 the following cases:

- 22 1. On debts secured by mechanics', construction, or laborers' liens for work or labor done
23 or performed or material furnished exclusively for the improvement of the same.
- 24 2. On debts secured by mortgage on the premises executed and acknowledged by both
25 ~~husband and wife~~parties to a marriage, or an unmarried claimant.
- 26 3. On debts created for the purchase thereof and for all taxes accruing and levied
27 thereon.
- 28 4. On all other debts when, upon an appraisal as provided by section 47-18-06, it
29 appears that the value of the homestead is more than one hundred thousand dollars
30 over and above liens or encumbrances on the homestead, and then only to the extent

1 of any value in excess of the sum total of the liens and encumbrances plus said one
2 hundred thousand dollars.

3 **SECTION 26. AMENDMENT.** Section 47-18-05 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **47-18-05. Homestead - How conveyed.**

6 The homestead of a married person, without regard to the value ~~thereof~~ the homestead,
7 ~~cannot~~ may not be conveyed or encumbered unless the instrument by which ~~it~~ the homestead is
8 conveyed or encumbered is executed and acknowledged by both ~~the husband and~~
9 ~~wives~~ spouses.

10 **SECTION 27. AMENDMENT.** Section 47-18-14 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **47-18-14. Proceeds of sale exempt - Disposition.**

13 If the sale of a homestead is made as provided in section 47-18-13, the proceeds ~~thereof~~
14 the sale to the amount of the homestead exemption must be paid to the claimant and the
15 residue applied to the satisfaction of the execution. When the execution is against a married
16 claimant whose spouse is living, the court may direct that the one hundred thousand dollars be
17 deposited in court to be paid out only on the joint receipt of ~~the husband and wife~~ both spouses,
18 and it shall possess all the protection against legal process and voluntary disposition by either
19 spouse as did the original homestead premises whether paid directly to the claimant or to ~~the~~
20 ~~husband and wife~~ both spouses jointly.

21 **SECTION 28. AMENDMENT.** Section 50-25.1-10 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **50-25.1-10. Abrogation of privileged communications.**

24 Any privilege of communication between ~~husband and wife~~ two individuals married to each
25 other or between any professional person and the person's patient or client, except between
26 attorney and client, is abrogated and does not constitute grounds for preventing a report to be
27 made or for excluding evidence in any proceeding regarding child abuse, neglect, or death
28 resulting from abuse or neglect resulting from a report made under this chapter.

29 **SECTION 29. AMENDMENT.** Subsection 3 of section 54-52.4-02 of the North Dakota
30 Century Code is amended and reenacted as follows:

1 3. ~~In any case in which a husband and wife~~ two individuals married to each other are
2 each entitled to family leave under this chapter and are employed by the same
3 employer, the aggregate period of family leave to which both spouses are entitled may
4 be limited by the employer to twelve workweeks during any twelve-month period.

5 **SECTION 30. AMENDMENT.** Subsection 2 of section 57-38-31 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 2. The same filing status and deduction method used by ~~a husband and wife~~ two
8 individuals married to each other when filing federal income tax returns must be used
9 when filing state income tax returns.

10 **SECTION 31. AMENDMENT.** Subsection 5 of section 57-40.3-04 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 5. a. A motor vehicle acquired by inheritance from, by bequest of, or operation of a
13 trust created by a decedent who owned it;
- 14 b. The transfer of a motor vehicle that was previously titled or licensed in the name
15 of an individual or in the names of two or more joint tenants and subsequently
16 transferred without monetary consideration to one or more joint tenants, including
17 a transfer into a trust in which one or more of the joint tenants is beneficiary or
18 trustee;
- 19 c. The transfer of a motor vehicle by way of gift between ~~a husband and wife~~ two
20 spouses married to each other, parent and child, grandparent and grandchild, or
21 brothers and sisters, including a transfer into a trust in which the trustor and
22 beneficiary occupy one of these relationships;
- 23 d. The transfer of a motor vehicle without monetary consideration into a trust in
24 which the beneficiary is the person in whose name the motor vehicle was
25 previously titled or licensed;
- 26 e. The transfer of a motor vehicle to reflect a new name of the owner caused by a
27 business reorganization in which the ownership of the reorganized business
28 remains in the same person or persons as before the reorganization, if the title
29 transfer is completed within one hundred eighty days from the effective date of
30 the reorganization;

- 1 f. The transfer of a motor vehicle previously transferred under subdivision e which
2 returns ownership to the previous owner; and
3 g. The transfer of a motor vehicle without monetary consideration from a revocable
4 living trust to the trustor or to the spouse, child, or sibling of the trustor.

5 **SECTION 32. AMENDMENT.** Section 57-40.3-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-40.3-07. Title or license registration not to be issued unless tax paid.**

8 ~~No~~The director of the department of transportation may not issue a title or license
9 registration shall be issued by the director of the department of transportation for the ownership
10 or operation of any motor vehicle to any applicant for title or license registration unless the tax
11 imposed by this chapter shall be paid by the applicant to the director of the department of
12 transportation except:

- 13 1. For those vehicles ~~which~~that have been previously licensed and the applicant for
14 license registration is the same person in whose name the license registration had
15 previously been issued.
16 2. For those vehicles transferred by way of gift between ~~a husband and wife~~two
17 individuals married to each other, parent and child, or brothers and sisters.
18 3. For those vehicles ~~which~~that have been previously licensed and the applicant for
19 license registration is the same business organization to which the license registration
20 had been issued but the name of which has been changed through incorporation or
21 other reorganization in business structure but the ownership of which remains in the
22 same person or persons as prior to the reorganization.
23 4. For vehicles ~~which~~that have been previously licensed and are transferred between a
24 member of a general or limited partnership and the partnership at the time the
25 partnership is established or terminated, between a stockholder of a corporation and
26 the corporation at the time the corporation is organized or liquidated, or between a
27 member of a limited liability company and the limited liability company at the time the
28 limited liability company is organized or terminated.
29 5. For a vehicle leased and registered or licensed in another state by a nonresident
30 individual who is stationed as a member of the armed services of the United States in
31 this state, the vehicle is exempt from tax imposed under this chapter and registration

1 in this state must be issued upon application and payment of appropriate registration
2 fees.

3 **SECTION 33. AMENDMENT.** Subsection 3 of section 57-40.5-03 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 3. Aircraft which were previously titled or registered in the names of two or more joint
6 tenants and subsequently transferred without monetary consideration to one or more
7 of the joint tenants; the transfer of aircraft by gift, inheritance, or devise between a
8 ~~husband and wife~~two individuals married to each other, parent and child, or brothers
9 and sisters; and the transfer of aircraft to reflect a new name of the owner caused by a
10 business reorganization, if the ownership of the business organization remains in the
11 same person or persons as prior to the reorganization.