

SENATE BILL NO. 2327

Introduced by

Senators Clemens, Dever

Representatives Dyk, Hoverson

1 A BILL for an Act to create and enact chapter 14-15.2 and a new section to chapter 44-04 of the
2 North Dakota Century Code, relating to the creation of the fathers' adoption registry and an
3 exemption to open records requests pertaining to the registry; to amend and reenact sections
4 14-15-09 and 14-15-19 of the North Dakota Century Code, relating to the requirements to
5 petition for adoption and relinquishment of parental rights; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Section 14-15-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **14-15-09. Petition for adoption.**

- 10 1. A petition for adoption must be signed and verified by the petitioner, filed with the clerk
11 of the court, and state:
- 12 a. The date and place of birth of the individual to be adopted, if known.
 - 13 b. The name to be used for the individual to be adopted.
 - 14 c. The date petitioner acquired custody or date of placement of the minor and the
15 name of the individual placing the minor.
 - 16 d. The full name, age, place, and duration of residence of the petitioner.
 - 17 e. The marital status of the petitioner, including the date and place of marriage, if
18 married.
 - 19 f. That the petitioner has facilities and resources, including those available under a
20 subsidy agreement, suitable to provide for the nurture and care of the minor to be
21 adopted, and that it is the desire of the petitioner to establish the relationship of
22 parent and child with the individual to be adopted.
 - 23 g. A description and estimate of value of any property of the individual to be
24 adopted.

- 1 h. The name of any individual whose consent to the adoption is required, but who
2 has not consented, and facts or circumstances which excuse the lack of the
3 individual's consent normally required to the adoption.
- 4 i. The department as respondent.
- 5 j. The human service zone as respondent if the minor to be adopted is in the
6 custody of the human service zone.
- 7 k. That the petitioner's expenses were reasonable as verified by the court.
8 Reasonable fees may be charged for professional services and living expenses if
9 reflected in a report of agreements and disbursements filed under this chapter
10 and approved by the court. The fees may not be contingent upon placement of
11 the child for adoption, consent to adoption, or cooperation in the completion of
12 adoption. Reasonable fees may include:
- 13 (1) Preplacement counseling, adoption assessment, placement of the child,
14 foster care, or other preadoption services, which must be paid directly to the
15 provider of the services;
- 16 (2) Legal fees relating to the petition for relinquishment or adoption, that must
17 be paid directly to the provider of the services;
- 18 (3) Medical expenses relating to prenatal care and the birth of the child, that are
19 not already covered by health insurance;
- 20 (4) Expenses for transportation, meals, and lodging incurred for placement of
21 the child or in order to receive counseling, legal, or medical services related
22 to the pregnancy, birth, or placement; and
- 23 (5) Living expenses of the birth mother which are needed to maintain an
24 adequate standard of living, which the birth mother is unable to otherwise
25 maintain because of loss of income or other support resulting from the
26 pregnancy.
- 27 (a) The payments may cover expenses incurred during the
28 pregnancy-related incapacity but not for a period longer than six
29 weeks following the delivery, unless the court determines within the
30 six-week period that the birth mother is unable to be employed due to
31 physical limitations relating to the birth of the child.

1 action under this chapter on any ground provided by other law for termination of the
2 relationship, and in any event on the ground that:

- 3 a. ~~That the~~The minor has been abandoned by the parent;
- 4 b. ~~That by~~By reason of the misconduct, faults, or habits of the parent or the
5 repeated and continuous neglect or refusal of the parent, the minor is without
6 proper parental care and control, or subsistence, education, or other care or
7 control necessary for the minor's physical, mental, or emotional health or morals,
8 or, by reason of physical or mental incapacity the parent is unable to provide
9 necessary parental care for the minor, and the court finds that the conditions and
10 causes of the behavior, neglect, or incapacity are irremediable or will not be
11 remedied by the parent, and that by reason thereof the minor is suffering or
12 probably will suffer serious physical, mental, moral, or emotional harm; or
- 13 c. ~~That in~~In the case of a parent not having custody of a minor, the noncustodial
14 parent's consent is being unreasonably withheld contrary to the best interest of
15 the minor.

16 4. For the purpose of proceeding under this chapter, a decree terminating all rights of a
17 parent with reference to a child or the relationship of parent and child issued by a court
18 of competent jurisdiction in this or any other state dispenses with the consent to
19 adoption proceedings of a parent whose rights or parent and child relationship are
20 terminated by the decree and with any required notice of an adoption action other than
21 as provided in this section.

22 5. A petition for termination of the relationship of parent and child made in connection
23 with an adoption action may be made by:

- 24 a. Either parent if termination of the relationship is sought with respect to the other
25 parent;
- 26 b. The petitioner for adoption, the guardian of the individual, the legal custodian of
27 the child, or the individual standing in parental relationship to the child;
- 28 c. An agency; or
- 29 d. Any other individual having a legitimate interest in the matter.

30 6. a. If the identity of the father or mother is known and an address for service is also
31 known, or the address can be ascertained with reasonable diligence, the father or

- 1 mother must be personally served the petition and notice for termination of
2 parental rights in compliance with the North Dakota Rules of Civil Procedure.
- 3 b. If the location or identity of the father or mother is unknown but the father's or
4 mother's location is known, and the identity of the father or mother cannot be
5 ascertained with reasonable diligence, notice must be given by publication of the
6 petition at least once a week for three consecutive weeks in the official
7 newspaper of the county in which the unknown father or mother is located
8 searching the fathers' adoption registry in accordance with chapter 14-15.2.
- 9 c. If the ~~identity and location of the father or mother are unknown and the location~~
10 ~~and identity of the father or mother~~ cannot be ascertained with reasonable
11 diligence, notice must be given by publication of the petition at least once a week
12 for three consecutive weeks in the official newspaper of the county in which
13 conception occurred.
- 14 d. The last publication or the interested party's request for a search of the fathers'
15 adoption registry as required under this subsection must be occur at least ten
16 days before the time set for hearing. Proof of publication of the notice or proof of
17 the fathers' adoption registry search must be made at or before the hearing and
18 filed in the proceeding.
- 19 7. Before the petition is heard, notice of the hearing on the petition and opportunity to be
20 heard must be given the parents of the child, the guardian of the child, the person
21 having legal custody of the child, any proposed custodian of the child, and, in the
22 discretion of the court, a person representing any party.
- 23 8. Notwithstanding the provisions of subsection 2, a relinquishment of parental rights with
24 respect to a child, executed under this section, may be withdrawn by the parent, and a
25 decree of a court terminating the parent and child relationship under this section may
26 be vacated by the court upon motion of the parent, if the child is not on placement for
27 adoption and the person having custody of the child consents in writing to the
28 withdrawal or vacation of the decree.

29 **SECTION 3.** Chapter 14-15.2 of the North Dakota Century Code is created and enacted as
30 follows:

1 **14-15.2-01. Definitions.**

2 As used in this chapter, unless the context otherwise requires:

- 3 1. "Alleged father" means an alleged father interested in a minor child who is, or is
4 expected to be, the subject of an adoption proceeding and whose mother resides in
5 this state.
- 6 2. "Department" means the department of health and human services.
- 7 3. "Executive director" means the executive director of the department of health and
8 human services.
- 9 4. "Interested party" includes an individual intending to adopt a child, a child welfare
10 agency with which the mother has placed or has given written notice of her intention to
11 place a child for adoption, the mother of a child, or an attorney representing an
12 interested party.

13 **14-15.2-02. Establishment of registry - Fees.**

14 The executive director shall establish the fathers' adoption registry. The fathers' adoption
15 registry shall identify and locate a registered alleged father so an interested party may provide
16 notice of a petition to adopt a minor as required under section 14-15-11. A search of the fathers'
17 adoption registry may serve as notice of relinquishment and termination of parental rights if
18 subdivision c or d of subsection 6 of section 14-15-19 apply. A limitation on an alleged father's
19 right to assert an interest in the child as provided in this section applies only in adoption
20 proceedings and does not apply to an individual entitled to notice and consent under section
21 14-15-05 or 14-15-11. A registrant is responsible for updating his personal information on the
22 registry. The executive director may establish informational material and public service
23 announcements necessary to implement this section.

- 24 1. The fathers' adoption registry must include the following information:
- 25 a. With respect to the alleged father, the:
- 26 (1) Name, including any other names by which the alleged father may be
27 known;
- 28 (2) Address at which he may be served with notice under this chapter, including
29 any change of address;
- 30 (3) Social security number, if known;
- 31 (4) Date of birth; and

- 1 (5) If applicable, a certified copy of an order by a court of another state or
2 territory of the United States adjudicating the alleged father to be the father
3 of the child;
- 4 b. With respect to the mother of the child, if known, her:
- 5 (1) Name, including all other names by which the mother may be known;
6 (2) Last address;
7 (3) Social security number; and
8 (4) Date of birth;
- 9 c. If known to the alleged father, the name, gender, place of birth, and date of birth
10 or anticipated date of birth of the child;
- 11 d. The date the registration is postmarked or the date it was delivered to the
12 executive director by means other than mail to the address on the registration
13 form; and
- 14 e. Other information the executive director determines by rule to be necessary for
15 the orderly administration of the registry.
- 16 2. The executive director shall notify the mother of the child whenever an alleged father
17 has registered with the fathers' adoption registry under this section. Notice must be
18 sent to the name and address submitted by the alleged father under paragraph 2 of
19 subdivision b of subsection 1 of this section. If no current address for the mother is
20 submitted by the alleged father, the executive director may not notify the mother
21 unless she has provided the fathers' adoption registry with her name and address.
22 Notice must be mailed within fourteen days of the date the executive director received
23 the alleged father's adoption registration unless a search has been requested under
24 section 14-15.2-03. There may be no charge to the birth mother for this notice.
- 25 3. The executive director shall set reasonable fees for the use of the registry. An alleged
26 father may not be charged a fee for registering. The executive director shall deposit
27 funds collected under this section in the department of health and human services
28 operating fund for administering the fathers' adoption registry, subject to legislative
29 appropriations.

1 **14-15.2-03. Requirement to search registry before adoption petition may be granted -**

2 **Proof of search.**

- 3 1. A petition for adoption may not be granted unless an interested party searches the
4 registry and provides proof of the search. A search may not be conducted until the
5 sixth business day following the birth of the child.
- 6 2. Proof of the search may be produced with a certified copy of the alleged father's
7 registration form or by a certified statement of the executive director that no
8 registration of an alleged father in relation to a child who is or may be the subject of an
9 adoption petition could be located. The department shall produce proof of the search
10 within five business days of the interested party's request.
- 11 3. Proof of search of the registry must be filed with the court before entry of any final
12 order of adoption.

13 **14-15.2-04. Search of registry for child support enforcement purposes.**

14 Upon request of a public authority or child support agency, the executive director may
15 search the registry to determine whether an alleged father is registered in relation to a child who
16 is or may be the subject of a child support obligation. A search of the registry may be proven by
17 the production of a certified copy of the alleged father's registration form or by a certified
18 statement of the executive director that after a search, no registration of an alleged father in
19 relation to the child could be located. A public authority or child support agency may not be
20 charged a fee for use of the registry.

21 **14-15.2-05. Classification of registry data.**

22 Records and data in the fathers' adoption registry are exempt records. An individual who
23 receives data under this section may use the data only for purposes authorized under this
24 section or other law. Data in the registry may be released to:

- 25 1. An individual who is required to search the registry under section 14-15.2-03 if the
26 data relates to the child who is or may be the subject of the adoption petition;
- 27 2. The mother of the child listed on the alleged father's registration form who the
28 executive director is required to notify under subsection 2 of section 14-15.2-02;
- 29 3. A public authority as provided in section 14-15.2-04; or
- 30 4. An attorney who has signed an affidavit from the executive director attesting that the
31 attorney represents the birth mother or the prospective adoptive parents.

1 **14-15.2-06. Criminal penalty for registering false information.**

2 An individual who knowingly or intentionally registers false information under this section is
3 guilty of a class A misdemeanor.

4 **14-15.2-07. Failure to register.**

5 1. Except for an alleged father entitled to notice and consent under section 14-15-05 or
6 14-15-11, an alleged father who fails to register by the seventh day following the birth
7 of the child:

- 8 a. Is barred from bringing or maintaining an action to assert an interest in the child
9 during the pending adoption proceeding concerning the child;
10 b. Is considered to have waived any right to notice of a hearing in a judicial
11 proceeding for adoption of the child; and
12 c. Is considered to have relinquished the rights of a parent with reference to a child
13 and the relationship of parent and child is terminated.

14 2. An alleged father who has not timely registered under subsection 1 is considered to
15 have timely registered if he proves by clear and convincing evidence that:

- 16 a. It was not possible for him to register by the seventh day following the birth of the
17 child;
18 b. His failure to register was through no fault of his own; and
19 c. He registered within seven days after it became possible for him to file.

20 3. A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to
21 register.

22 **14-15.2-08. Notice and service for those on fathers' adoption registry who are not**
23 **otherwise entitled to notice.**

24 1. Any time after conception, an interested party may serve by certified mail the fathers'
25 adoption registry forms created by the state court administrator pursuant to section
26 14-15.2-10 to a registered alleged father. These documents may be served on an
27 alleged father in accordance with the North Dakota Rules of Civil Procedure, or in lieu
28 of personal service, service may be made as follows:

- 29 a. The interested party or that party's attorney shall mail to a registered alleged
30 father, a copy of the fathers' adoption registry forms, return receipt requested.

1 The receipt for certified mail must state the name and address of the addressee
2 and the date of mailing, and must be attached to the original notice.

3 b. The return receipt, when filed with the court, must be attached to the original
4 fathers' adoption registry forms.

5 2. The court administrator shall note the fact of service in a permanent record.

6 **14-15.2-09. Response to notice to registered alleged father - Limitation of rights for**
7 **failure to respond and upon filing of denial of paternity.**

8 1. For an alleged father to preserve the right to maintain an interest in the child and
9 receive notice during the pending adoption proceeding, the alleged father shall file a
10 completed intent to claim parental rights form within seven days of receipt of the
11 fathers' adoption registry forms with the court administrator in the county in which the
12 adoption petition will be filed, as provided by the petitioner, stating he intends to initiate
13 a paternity action within thirty days of receipt of the notice to registered alleged father.
14 Failure to initiate a paternity action within thirty days of receipt of the notice to
15 registered alleged father does not act as a bar to receiving notice under section
16 14-15-11. If good cause is shown, the alleged father must be allowed more time to
17 initiate the paternity action.

18 2. An alleged father who files a completed denial of paternity form and consent to
19 adoption form or who fails to timely file an intent to claim parental rights form with the
20 court:

21 a. Is barred from bringing or maintaining an action to assert an interest in the child
22 during the pending adoption proceeding concerning the child;

23 b. Is considered to have waived any right to notice of a hearing in a judicial
24 proceeding for adoption of the child; and

25 c. Is considered to have relinquished the rights of a parent with reference to a child
26 and the relationship of parent and child is terminated.

27 3. Failure to register under this chapter is prima facie evidence of sufficient grounds to
28 support termination of the alleged father's parental rights.

29 **14-15.2-10. Fathers' adoption registry forms.**

30 The state court administrator shall develop the following forms:

31 1. Notice to registered alleged father:

- 1 2. Intent to claim parental rights;
- 2 3. Denial of paternity;
- 3 4. Consent to adoption; and
- 4 5. Notice to registered alleged father of the county in which the adoption petition will be
- 5 filed.

6 **14-15.2-11. Right to counsel at public expense.**

7 Upon proof of indigence, an alleged father who has registered with the fathers' adoption
8 registry, has received a notice to registered alleged father, and has timely filed an intent to claim
9 paternal rights form with the court administrator, must have counsel appointed at public
10 expense.

11 **14-15.2-12. Applicability of Indian Child Welfare Act.**

12 In an action involving an Indian child, the Indian Child Welfare Act of 1978, [25 U.S.C. 1901
13 through 1923], controls to the extent the provisions of this chapter are inconsistent with those
14 laws. The public acts, records, and judicial proceedings of any Indian tribe that provides an
15 acknowledgment of paternity or that establish paternity pursuant to tribal law or custom must be
16 given full faith and credit as provided in the Indian Child Welfare Act. This section does not
17 defeat the right of an Indian father who has acknowledged or established his paternity pursuant
18 to tribal law or custom to commence a paternity proceeding, except no father may file a
19 paternity proceeding after the entry of a final decree of adoption.

20 **14-15.2-13. Fees for fathers' adoption registry.**

21 In addition to any other filing fees, the state court administrator shall assess a seventy-five
22 dollar adoption filing fee surcharge on an adoption petition filed in a district court. The state
23 court administrator shall remit funding collected under this section to the state treasurer. The
24 state treasurer shall deposit fees collected under this section in the department of health and
25 human services operating fund for the purpose of implementing and maintaining the fathers'
26 adoption registry, subject to legislative appropriations.

27 **14-15.2-14. International adoptions.**

28 This chapter does not apply to international adoptions.

29 **SECTION 4.** A new section to chapter 44-04 of the North Dakota Century Code is created
30 and enacted as follows:

- 1 **Fathers' adoption registry - Exempt.**
- 2 Any record maintained within the fathers' adoption registry under chapter 14-15.2 is an
- 3 exempt record.