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Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1362

Introduced by

Representatives Christensen, Bosch, Heilman, Kasper, Koppelman, Lefor, Meier, M. Ruby
Senators Boehm, Larsen, Paulson, Wobbema

1 A BILL for an Act to create and enact a new section to chapter 14-09 of the North Dakota
2 Century Code, relating to recognizing a parent's interest in their child's upbringing.

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

4 **SECTION 1.** A new section to chapter 14-09 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Parent's interest in child's upbringing.**

7 1. As used in this section:

8 a. "Parent" means parent or legal guardian not including a school or other institution
9 servis in loco parentis; and

10 b. "Stakeholder" means a person that has a vested interest in the success of the
11 organization or system.

12 2. Notwithstanding any other provision of law:

13 ~~_____~~ a. A parent possesses a fundamental liberty interest in the care, custody, and
14 management of the parent's child and, at all times, retains a vital interest in
15 preventing the irretrievable destruction of family life.

16 b. It is in the best interest and welfare of a child to be raised under the care and
17 supervision of the child's parents.

18 c. A child's need for a ~~normal family life in a~~ permanent home and for positive,
19 nurturing family relationships usually is best met by the child's parents.

20 d. The integrity of the family unit and the right of a parent to conceive, raise,
21 manage, train, educate, and reasonably discipline the parent's child should be
22 constitutionally protected.

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- 1 e. The right of a fit, competent parent to raise the parent's child without undue
2 government interference is a fundamental liberty interest and is fundamental
3 public policy of this state.
- 4 f. The fundamental liberty interest of a parent is recognized, protected, and does
5 not cease to exist ~~simply because a parent may fail to be a model parent or~~
6 because the parent's child is placed in the temporary custody of the state.
- 7 g. ~~There is a rebuttable presumption that a parent's decisions are in the parent's~~
8 ~~child's best interests.~~
- 9 ~~h.~~ A fundamentally fair process must be provided to a parent if the state moves to
10 challenge or interfere with parental rights.
- 11 (1) A government entity must support any actions or allegations made in
12 opposition to the rights and desires of a parent regarding the parent's child
13 by sufficient evidence to satisfy a parent's constitutional entitlement to
14 heightened protection against government interference with the parent's
15 fundamental rights and liberty interests and ~~concomitantly,~~ the right of the
16 child to be reared by the child's parent.
- 17 (2) Before adjudication of unfitness, government action in relation to a parent
18 and the parent's child may not exceed the least restrictive means of
19 alternatives available to accomplish a compelling state interest.
- 20 (3) Until the state proves parental unfitness, and the child suffers, or is
21 substantially likely to suffer, serious detriment as a result, the child and the
22 child's parent share a vital interest in preventing erroneous termination of
23 their relationship and the state may not presume a child and the child's
24 parent are adversaries.
- 25 3. If a parent's fundamental rights protected by this section are violated, a parent may
26 assert that violation as a claim or defense in a judicial proceeding and may obtain
27 appropriate relief against a governmental entity. The prevailing party in an action filed
28 under this section is entitled to reasonable attorney's fees and costs.
- 29 4. It is the public policy of the state that:
- 30 a. A parent retains the fundamental right and duty to exercise primary control over
31 the care, supervision, upbringing, and education of the parent's child;

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- 1 b. A child has the right to protection from abuse and neglect; and
- 2 c. The state retains a compelling interest in investigating, prosecuting, and
- 3 punishing abuse and neglect.
- 4 4.5. The state's education systems are supportive and secondary to the primary role of a
- 5 parent. The legislative assembly is the primary stakeholder in the establishment,
- 6 maintenance, and success of the state's education systems. The department of public
- 7 instruction is the primary stakeholder in the state's public education system. The board
- 8 of a school district is a secondary stakeholder in the state's public education system.