

DOMESTIC RELATIONS AND PERSONS

CHAPTER 172

SENATE BILL NO. 2249
(Committee on Judiciary)
(At the request of the Attorney General)

SEX DISCRIMINATORY LANGUAGE

AN ACT to amend and reenact sections 5-01-06, 11-15-03, 11-29-10, 11-29-20, 12-53-13, subsection 2 of section 12.1-20-01, sections 12.1-20-02, 12.1-29-02, 14-02-06, 14-02-08, 14-05-06, 14-05-07, 14-05-25, 14-05-26, 14-07-03, 14-07-05, 14-07-08, 14-07-10, 14-07-11, 14-07-16, 14-07-20, 14-07-21, 14-07-22, 14-08-01, 14-08-02, 14-08-03, 14-08-04, 14-08-05, 14-09-05, 14-09-06, 14-09-08, 14-09-09, 18-11-17, 23-14-04, 26-10-17, 27-17-01, 27-17-02, 28-21-12, 28-22-11, 32-04-12, 34-07-16, subsection 7 of section 37-01-40, 37-02-01, 37-07-01, 37-12-01, 37-15-02, 37-15-10, 44-08-17, 50-02-01, 50-02-03, 50-02-04, and 54-01-26 of the North Dakota Century Code, relating to correcting sex discriminatory language in North Dakota statutes, eliminating spousal immunity for the crime of gross sexual imposition, and eliminating rights of personal relation; and to repeal section 50-02-02 of the North Dakota Century Code, relating to acquiring residency in North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 5-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-06. Recovery of damages resulting from intoxication. Every husband, wife, child, parent, guardian, employer, or other person who shall be injured in person, property or means of support by any intoxicated person, or in consequence of intoxication, shall have a right of action against any person who shall have caused such intoxication by disposing, selling, bartering, or giving away alcoholic beverages contrary to statute for all damages sustained.

SECTION 2. AMENDMENT. Section 11-15-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-03. Duties of sheriff. The sheriff shall:

1. Preserve the peace.

* NOTE: Section 5-01-06 was also amended by section 1 of Senate Bill No. 2413, chapter 107.

2. Arrest and take before the nearest magistrate, or before the magistrate who issued the warrant, all persons who attempt to commit or who have committed a public offense.
3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge.
4. Attend each term of the district court held within his county; obey its lawful orders and directions; and act as crier thereof and make proclamation of the opening and adjournment of court and of any other matter under its direction.
5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of his duties.
6. Take charge of and keep the county jail and the prisoners therein.
7. Endorse upon all notices and process received by him for service the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of his fees, a certificate showing the names of the parties, the title of the paper, and the time of its reception.
8. Serve all process or notices in the manner prescribed by law.
9. Certify under his hand upon each process or notice the time and manner of service, or if he fails to make service, the reasons for his failure, and return the same without delay.
10. Perform such other duties as are required of him by law.
11. Enforce, personally or through his deputies, all statutes defining traffic violations denominated noncriminal by section 39-06.1-02.

SECTION 3. AMENDMENT. Section 11-29-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-29-10. Application for loan. All persons who are entitled to and who wish to avail themselves of the benefits of this chapter shall file with the county auditor, on or before the tenth day of March, an application, duly sworn to before the county auditor or some other officer authorized to administer oaths, setting forth:

1. The number of acres the applicant has plowed or prepared for seeding and the number of acres he intends to have plowed or prepared for seeding.

2. The number of bushels and the kind of grain the applicant will require to seed the ground prepared or to be prepared for cropping.
3. The number of bushels of grain the applicant harvested in the preceding year.
4. The amount and kind of grain and feed the applicant has in his possession.
5. The amount of tractor fuel, if any, the applicant will require for crop purposes.
6. That the applicant has not procured and is not able to procure the necessary seed grain, feed, or fuel for the current year, that he desires the same for seed, feed, and cropping purposes and for no other purpose, and that he will not sell or dispose of such seed, feed, or fuel but will use the same, and the whole thereof, in seeding the land prepared or to be prepared for crop.
7. The true and full description of all the real and personal property owned by the applicant and the encumbrances thereon.
8. A true description, by government subdivisions, of the lands upon which the applicant intends to sow the seed grain.

If the applicant is a renter, the owner of the land shall sign the application with him unless an exception is made by the board of county commissioners in such instance. If the owner of the land is a resident and married, his wife the spouse also shall sign the application.

SECTION 4. AMENDMENT. Section 11-29-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-29-20. Applicant to sign contract - Effect of contract. The order of the county auditor for the seed, feed, or tractor fuel allowed to an applicant shall not be delivered to the applicant until he has signed a contract in duplicate. Such contract shall have the same force and effect as a promissory note. The contract shall be attested by the county auditor and shall be to the effect that the applicant, for and in consideration of ----- bushels of seed grain, ----- of feed, and ----- of tractor fuel received from ----- County, promises to pay to said county ----- dollars, the amount of the cost of said seed grain, feed, and tractor fuel. If the applicant is a renter, the owner of the land shall sign the contract with him the renter, and if the owner is married and resides in this state, his wife the owner's spouse also shall sign the contract, save in cases where an exception is made by an order of the board of county commissioners.

SECTION 5. AMENDMENT. Section 12-53-13 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-13. Imposition of sentence suspended - When authorized. When a defendant has been found guilty of a crime, whether or not for the first time, the court having jurisdiction thereof, upon application or its own motion may, in its discretion, suspend the imposing of the sentence and may direct that such suspension continue for a definite period of time, upon such terms and conditions as it may determine. Such period shall not exceed five years, except that in cases where the defendant has been found guilty of abandonment or nonsupport of his wife a spouse or children, the period may be continued for as long as responsibility for support continues.

SECTION 6. AMENDMENT. Subsection 2 of section 12.1-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In sections ~~12-1-20-03~~ 12.1-20-04 through 12.1-20-09, an offense excludes conduct with an actor's spouse. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation, a temporary or permanent adult abuse protection order, or an interim order issued in connection with a divorce or separation action. Where an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse as an accomplice in an offense which he causes another person to perform.

SECTION 7. AMENDMENT. Section 12.1-20-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-20-02. Definitions. In sections 12.1-20-03 through 12.1-20-12:

1. "Sexual act" means sexual contact between human beings ~~who are not husband and wife~~ consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, or the mouth and the vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, or between the penis and the anus or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
2. "Sexual contact" means any touching of the sexual or other intimate parts of the person ~~for the purpose of arousing or gratifying sexual desire.~~
3. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.

4. "Object" means anything used in commission of a sexual act other than the person of the actor.

SECTION 8. AMENDMENT. Section 12.1-29-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-29-02. Facilitating prostitution.

1. A person is guilty of an offense if he:
 - a. Knowingly solicits a person to patronize a prostitute;
 - b. Knowingly procures a prostitute for a patron;
 - c. Knowingly leases or otherwise permits a place controlled by the actor, alone or in association with others, to be regularly used for prostitution, promoting prostitution, or facilitating prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or taking other legally available means; or
 - d. Knowingly induces or otherwise intentionally causes another to remain a prostitute. A person who is supported in whole or substantial part by the proceeds of prostitution, other than the prostitute or the prostitute's minor child or a person whom the prostitute is required by law to support, is presumed to be knowingly inducing or intentionally causing another to remain a prostitute.
2. The offense is a class C felony if the actor intentionally causes another to remain a prostitute by force or threat, or the prostitute is the actor's wife spouse, child, or ward, or a person for whose care, protection, or support he is responsible, or the prostitute is, in fact, less than sixteen years old. Otherwise it is a class A misdemeanor.

SECTION 9. AMENDMENT. Section 14-02-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02-06. Offenses against personal relation. ~~The rights of personal relation forbid-~~

- 1- ~~The abduction or enticement of a husband from his wife, or of a parent from his child-~~
- 2- ~~The abduction or enticement of a wife from her husband, of a child from a parent, or from a guardian entitled to its custody, or of a servant from his master-~~

- 3- The seduction of a wife, daughter, or orphan sister.
- 4- Any injury to a servant which affects his ability to serve his master. All civil causes of action for breach of promise to marry, alienation of affection, criminal conversation, and seduction are abolished. A cause of action brought before July 1, 1983, under this section, is valid until final judgment is rendered.

SECTION 10. AMENDMENT. Section 14-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02-08. Libel suits against newspapers - Retraction. Before any suit for libel can be brought against a newspaper, ~~other than for the libel of or concerning a female,~~ the party aggrieved, at least three days before filing his complaint, must serve notice on the publisher of such newspaper at the principal office of its publication, specifying the statement alleged to be false and defamatory. If on the trial it appears that the article was published in good faith, and its falsity was due to a misapprehension in regard to the facts, and a full and fair retraction of the erroneous statement was published in the next issue of the paper, or in the case of a daily paper, within three days after the mistake was brought to the attention of the publisher, in as conspicuous a place and type as the original article, the plaintiff will be entitled to recover only such damages as he can show he has sustained to his property, business, trade, profession, or occupation. If the libel is against a candidate for office, the retraction also must be made editorially, and in the case of a daily paper, at least three days before the election, and in the case of a weekly paper, at least ten days before the election.

SECTION 11. AMENDMENT. Section 14-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-06. "Desertion" defined. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert:

1. Persistent refusal to have reasonable matrimonial intercourse as husband and wife when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party when there is no just cause for such refusal, is desertion.
2. When one party is induced by the stratagem or fraud of the other party to leave the family dwelling place or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud and not by the other.

3. Departure or absence of one party from the family dwelling place caused by cruelty or by threats of bodily harm from which danger reasonably would be apprehended from the other is not desertion by the absent party, but it is desertion by the other party.
4. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.
5. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.
6. Consent to a separation is a revocable act, and if one of the parties afterwards in good faith seeks a reconciliation and restoration but the other refuses it, such refusal is desertion.
7. If one party deserts the other and before the expiration of the statutory period required to make the desertion a cause of divorce returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of the refusal.
8. A husband may choose any reasonable place or mode of living and if the wife does not conform thereto it is desertion.
9. If the place or mode of living selected by the husband is unreasonable and grossly unfit and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

SECTION 12. AMENDMENT. Section 14-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-07. "Willful neglect" defined. Willful neglect is the neglect of the husband failure of either spouse to provide for his wife the common necessities of life for the other party, he having the ability to do so when that spouse has the ability to do so and the party alleging neglect does not have the ability, or it is the failure to do so or when a spouse fails to provide by reason of idleness, profligacy, or dissipation. Willful neglect also is the neglect of the wife to provide for her husband the common necessities of life when the husband is unable from infirmity or other cause to support himself and she has the means and ability to provide for him.

SECTION 13. AMENDMENT. Section 14-05-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-25. Security for alimony - Disposition of homestead. The court may require either party to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by appointment of a receiver or by any other remedy applicable to the case. When the wife either the husband or the wife has a separate estate sufficient to give her a proper support, the court in its discretion may withhold any allowance to her that person out of the separate property of the husband or other spouse. The court, in rendering the decree of divorce, may assign the homestead or such part thereof as to the court may seem just, to the innocent party, either absolutely or for a limited period, according to the facts in the case and in consonance with the law relating to homesteads. The disposition of the homestead by the court, and all orders and decrees touching the alimony and maintenance of either party to a marriage and for the custody, education, and support of the children are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

SECTION 14. AMENDMENT. Section 14-05-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-26. Separate maintenance provided for when divorce denied. Though a judgment of divorce is denied, the court in an action for divorce may provide for the maintenance of a wife and her children, or any of them, by the husband one spouse by the other and the maintenance of any or all children.

SECTION 15. AMENDMENT. Section 14-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07-03. Duty to support. The husband must support himself and his wife out of his property or by his labor. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property and he is unable from infirmity to support himself and wife have a mutual duty to support each other out of their individual property and labor.

SECTION 16. AMENDMENT. Section 14-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07-05. Rights and liabilities of married woman person. The wife Any person after marriage has with respect to property, contracts, and torts the same capacity and rights and is subject to the same liabilities as before marriage, including liability to suit by his or her husband spouse. In all actions by or against her, she a married person, they shall sue and be sued in her their own name.

SECTION 17. AMENDMENT. Section 14-07-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07-08. Separate and mutual rights and liabilities of husband and wife. The separate and mutual rights and liabilities of a husband and a wife are as follows:

1. Neither the husband nor the wife as such is answerable for the acts of the other.
2. The earnings of the wife one spouse are not liable for the debts of the husband other spouse, and the earnings and accumulations of the wife either spouse and of her any minor children living with her either spouse or in her one spouse's custody, while she is the husband and wife are living separate from her husband each other, are the separate property of the wife each spouse.
3. The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, and for shelter for themselves and family, and for the education of their minor children.
4. The separate property of the husband or wife is not liable for the debts of the wife the other spouse but each is liable for their own debts contracted before or after marriage.
5. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage.

SECTION 18. AMENDMENT. Section 14-07-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07-10. Husband liable for wife's Mutual liability for necessities. if the husband neglects to make adequate provision for the support of his wife, any other person in good faith may supply her with articles necessary for her support and may recover the reasonable value thereof from the husband, except in the cases where by law he is not liable for her support. The parties to a marriage are mutually liable to any person who in good faith supplied either party with articles necessary for their support. Such persons may recover the reasonable value from either party except in the cases where by law one party is not liable for the support of the other.

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

14-07-11. Husband Spouse liable for support - Exception. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct in abandoning him, nor is he liable for her support when she is living separate from him by agreement, unless such support is stipulated in the agreement. An abandoned spouse is not liable for the support of the other spouse unless there is an offer to return on the part of the

abandoning spouse or the abandonment is justified by misconduct. Neither party is liable for the support of the other when living separate by agreement unless the support is stipulated in the agreement.

SECTION 20. AMENDMENT. Section 14-07-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07-16. Abandonment or nonsupport of wife spouse - Penalty. Every husband or wife who, without lawful excuse, deserts his wife or her spouse with intent wholly to abandon him or her or who willfully fails to furnish such food, shelter, clothing, and medical attention as is reasonably necessary and sufficient to keep the life of his wife the spouse from danger and discomfort and his or her health from injury, is guilty of a class C felony.

If a husband or wife while in another state and having left his wife their spouse in this state, willfully and intentionally and without lawful excuse deserts his wife their spouse and abandons her them, or while in such other state, willfully and intentionally fails to furnish such food, shelter, clothing and medical attention as is reasonably necessary, as herein provided, while his wife their spouse is in this state, such abandonment and failure to support shall be construed to have been committed in this state and all of the laws of this state with reference to punishment shall apply with the same force and effect as if such abandonment and failure to support had occurred in this state and he the abandoning spouse shall be subject to the penalty as in this section provided.

SECTION 21. AMENDMENT. Section 14-07-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07-20. Conditions of bond. The bond given in lieu of or in addition to the punishment for abandonment or nonsupport shall provide that the defendant shall furnish the wife a spouse or child with proper food, shelter, clothing, and medical attention for such a period, not exceeding five years, as the court may order. The bond, in the discretion of the court, may be conditioned upon the payment of a specified sum of money at stated intervals.

SECTION 22. AMENDMENT. Section 14-07-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07-21. Violation of conditions of bond - Who may sue on breach. Upon the filing of an affidavit showing the violation of the conditions of a bond given in lieu of or in addition to the punishment for nonsupport or desertion, the accused shall be heard upon an order to show cause. If the charges are sustained, the court may proceed with the trial of the defendant on the original charge, or may pronounce sentence under the original conviction, or may enforce the suspended sentence, as the case may be. The wife spouse, or child, and any person furnishing necessary food, shelter, clothing, or medical attention to either may sue upon the bond for a breach of any condition.

SECTION 23. AMENDMENT. Section 14-07-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07-22. Evidence required to prove relationship. In any prosecution for desertion or failure to support a wife, husband, or child, no other or greater evidence shall be required to prove the relationship of the defendant to such wife, husband, or child than is or shall be required to prove such relationship in a civil action.

SECTION 24. AMENDMENT. Section 14-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-08-01. Action against husband or wife for support of wife spouse and minor children - When maintained. Any married ~~woman~~ person may maintain an action in the district court of the county in which ~~she~~ the person resides against his or her husband spouse for failure on ~~his~~ their part to provide for:

1. ~~Her support~~ The support of the party bringing suit; and
2. The support of ~~her~~ minor children by said husband or wife living with ~~her~~ the party bringing suit.

SECTION 25. AMENDMENT. Section 14-08-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-08-02. Power of court to render judgment. If it shall appear to the court upon the trial of an action against a husband or wife to provide support for ~~his wife~~ their spouse and minor children that the husband or wife is able to support or contribute to the support of his wife or her spouse and said children and that ~~he~~ said party neglects or refuses to perform ~~his~~ their duty in that respect, the court may render such judgment as to the support by said husband party of his wife or her spouse and said children as shall be equitable in view of the circumstances of both parties.

SECTION 26. AMENDMENT. Section 14-08-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-08-03. Procedure for action. The practice in an action against a husband or wife to provide support for his wife or her spouse and minor children shall conform as nearly as may be to the practice in actions for divorce.

SECTION 27. AMENDMENT. Section 14-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-08-04. What payments made by husband spouses pending action. The court in its discretion may require the husband defending spouse to pay any money necessary to enable the plaintiff to prosecute the action and to support the plaintiff and ~~her~~ any children in plaintiff's custody during its pendency.

SECTION 28. AMENDMENT. Section 14-08-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-08-05. Security required - Receiver. The court may require the ~~husband~~ defendant in an action to give reasonable security for making any payments required under the provisions of this chapter and may enforce the same by the appointment of a receiver or by any remedy applicable to the case.

SECTION 29. AMENDMENT. Section 14-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-05. Custody of illegitimate child. ~~The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings. When maternity and paternity of an illegitimate child are positively established, the custody rights shall be equal as between mother and father and shall serve the best interests of the child. The custodial parent is entitled to the child's services and earnings.~~

SECTION 30. AMENDMENT. Section 14-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-06. Priority of custody of father and mother. ~~The husband and father, as such, has no rights superior to those of the wife and mother in~~ The husband and father and wife and mother have equal rights with regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other, and when they so live in a state of separation without being divorced, the district court or judge thereof, upon application of either, may grant a writ of habeas corpus to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules provided by law for awarding the custody of a minor or the appointment of a general guardian.

SECTION 31. AMENDMENT. Section 14-09-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-08. Mutual duty to support children. The parent entitled to the custody of a child must give ~~him~~ the child support and education suitable to ~~his~~ the child's circumstances. If the support and education which the ~~father~~ custodial parent of a legitimate child is able to give are inadequate, the ~~mother~~ other parent must assist ~~him~~ the custodial parent to the extent of his or her ability.

SECTION 32. AMENDMENT. Section 14-09-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09. Liability of stepfather stepparent for support. A ~~stepfather~~ stepparents are not bound to maintain ~~his wife's~~ their spouse's dependent children, as defined in section 50-09-01, unless

he receives them the child is received into his the stepparent's family. If he the stepparent receives them into his the family, he the stepparent is liable, to the extent of his or her ability, to support them during the marriage and so long thereafter as they remain in his the stepparent's family. Such liability may be enforced against him the stepparent by any person furnishing necessities to such children. If he receives them the children are received into his the stepparent's family and supports them supported by the stepparent, it is presumed that he the stepparent does so as a parent, in which case they the children are not liable to him the stepparent for their support, nor he the stepparent to them for their services. The legal obligation of a natural or adoptive ~~father~~ parent to support his or her children is not affected by the liability imposed upon their ~~stepfather~~ stepparent by this section.

SECTION 33. AMENDMENT. Section 18-11-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-11-17. Pensions to widews surviving spouses and children of deceased members. When a service pensioner, disability pensioner, deferred pensioner, or an active member of a relief association dies leaving: a widew surviving spouse to whom he the deceased was married while an active member of the association, a child or children who were living while the deceased was on the payroll of the fire department or who were born within nine months after said decedent was withdrawn from the payroll of said fire department, or both such widew surviving spouse and such children, then such widew surviving spouse and children shall be entitled to a monthly pension as follows:

1. If the deceased leaves only a widew surviving spouse, a pension in the sum of forty percent of a first-class fireman's monthly salary on January first during year the pension is paid to her the surviving spouse, during her such spouse's natural life or until she such spouse remarries.
2. If the deceased leaves both a widew surviving spouse and children, a monthly pension to the widew surviving spouse in the sum of forty percent of a first-class fireman's monthly salary on January first during year the pension is paid, for the rest of her the surviving spouse's natural life or until she such spouse remarries, and to the parent or guardian of any children under the age of eighteen years of age there shall be paid monthly twenty percent of a first-class fireman's monthly salary to be divided equally among such children.
3. If the deceased leaves only children, a monthly pension shall be paid to the guardian of such child or children for such child or children in the sum of sixty percent of a first-class fireman's monthly salary on January first during the year the pension is paid, to be divided equally

among such children; provided, however, that if there is only one surviving child, he shall receive a sum equal to forty percent of a first-class fireman's monthly salary. All pensions to child or children shall terminate when the child or children reaches the age of eighteen years.

SECTION 34. AMENDMENT. Section 23-14-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-04. District board of health. A district health unit shall be organized by the appointment of a district board of health to consist of not less than five members, one of whom shall be a physician, one a dentist, one a business or professional ~~man~~ person, one a farmer, and one a ~~woman~~ additional person, who shall be appointed for terms as follows: One for one year, one for two years, one for three years, one for four years, and one for five years. In all instances the board shall be comprised of both male and female members. All subsequent appointments shall be for a term of five years. Each appointee shall serve without compensation and until his successor is appointed and qualified, and if a vacancy occurs, the vacancy shall be filled by appointing for the remainder of the unexpired term. Each appointee shall qualify by filing the constitutional oath of office, and in case of a district health unit, such oath shall be filed in the office of the county auditor of the county having the larger population according to the most recent state or federal census. Each county in the district shall have at least one representative on the district board of health and counties of over fifteen thousand population shall have an additional representative for each fifteen thousand population or fraction thereof. In district units of less than five counties, each county shall have at least one representative on the district board of health and the additional representatives selected to constitute the minimum five-member board shall be equitably apportioned among the counties on a population basis. In a city-county health district comprised of only one county and having a city or cities of fifteen thousand population or more, each city having a population of fifteen thousand or more shall have a representative on the district board of health for each fifteen thousand population or fraction thereof and the remaining population of the county, exclusive of the populations of cities with fifteen thousand population or more each, shall have a representative on the district board of health for each fifteen thousand population or fraction thereof. The members of the district board of health shall be reimbursed for actual expenses incurred in attending official board meetings in the manner and to the extent provided for state officers.

SECTION 35. AMENDMENT. Section 26-10-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-10-17. Rights in policies of life insurance exempt from claims of creditors. The surrender value of any policy of life insurance which, upon the death of the insured, would be payable to the wife, husband, or children or any relative of the insured dependent, or

likely to be dependent, upon ~~him~~ the insured for support, shall be exempt absolutely from the claims of creditors of the insured. No creditor of the insured, and no court or officer of a court acting for any such creditors, shall have the right under any circumstances to elect for the insured to have such policy of insurance surrendered or in anywise converted into money, and no such policy of life insurance or property right therein belonging to the holder, and no value thereof, shall be subject to seizure under any process of any court under any circumstance.

SECTION 36. AMENDMENT. Section 27-17-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-17-01. Retirement of supreme court judges and district court judges.

1. Every judge of the supreme court or of the district court, including one who has served or shall have served in either or both capacities, shall, at the time he ceases to be such judge and regardless of his age at that time and without further payment by him into the judicial retirement fund, acquire a vested right to the judicial retirement salary herein provided for, payable upon application therefor at any time after he has attained any of the retirement ages with years of service, as follows:
 - 65 and 20 years of service, or
 - 66 and 18 years of service, or
 - 67 and 16 years of service, or
 - 68 and 14 years of service, or
 - 69 and 12 years of service, or
 - 70 and 10 years of service; provided however that any judge of the supreme court or district court who is appointed or elected to such court from and after July 1, 1960, who has become eligible for retirement hereunder but fails to make application therefor prior to his attaining the age of seventy-three years, shall automatically waive all retirement benefits hereunder and shall receive a return of only such moneys as have been retained by the state of North Dakota as a judicial retirement assessment, upon the salary of such judge.
2. If such judge shall have served fewer than the years of service above required for any given retirement age, he shall be entitled to receive judicial retirement salary only in proportion that his years of service bear to the years of service otherwise required for retirement at such age. Any judge who has not served at least ten years on reaching his seventy-third birthday shall not be deemed to have waived retirement benefits under this chapter, provided he retires at the expiration of his present term.
3. The amount of judicial retirement salary payable to a retired judge under subsection 1 of this section shall be equal to fifty percent of the annual salary payable to

judges of the classification the retired judge had at the time he retired, provided that prior to retirement he was reelected as a judge of either the supreme or district court following July 1, 1973, but in no event shall his judicial retirement salary be computed upon a judicial salary less than the one he last received prior to reelection. The amendment to this section shall not be construed to affect supreme or district court judges who shall have retired prior to July 1, 1973, or who shall retire during or at the end of their term of office which commenced prior to that date. As used in this subsection, the word "reelected" shall also include election of a former district judge to the supreme court, and election of a former supreme court judge to the district court.

4. The judicial retirement salary payable under this section shall be paid to the retired judge during the remainder of his natural life and shall be paid by the director of the office of management and budget, within thirty days after receiving application therefor, in the same manner as salaries are paid to judges of the district court and judges of the supreme court, except that judicial retirement salaries shall not be subject to judicial retirement assessment.
5. In lieu of receiving the judicial retirement salary otherwise payable under this chapter, the judge, at any time after having attained retirement age, may irrevocably elect to receive judicial retirement salary according to one of the following optional modes of payment:
 - a. First Option. Three-fourths of his judicial the judge's retirement salary payable to him the judge alone until he dies death and thereafter one-half of such amount payable to his widow the surviving spouse upon her the spouse's attaining sixty-two years of age and until she the spouse remarries or until she dies.
 - b. Second Option. Two-thirds of his judicial the judge's retirement salary payable to him the judge alone until he dies death and thereafter a like amount payable to his widow the surviving spouse upon her the spouse's attaining sixty-two years of age and until she the spouse remarries or until she dies.
 - c. Third Option. One-half of his judicial the judge's retirement salary payable to him the judge until he dies death and a like amount payable to his wife the spouse upon her the spouse's attaining sixty-two years of age and so long as she the spouse continues to be his wife or unremarried widow the judge's spouse or unremarried surviving spouse.

The election of one of the foregoing optional modes of payment shall be made in the application for payment of judicial retirement salary, or by written declaration of such election, signed by the judge and delivered to the director of the office of management and budget. In the event the judge shall have elected an optional mode of payment and dies without having made application for judicial retirement salary, the judicial retirement salary payable to ~~his widow~~ the surviving spouse according to ~~his~~ the judge's option shall be payable to ~~her~~ the surviving spouse in the same manner as if ~~he~~ the judge had made application for judicial retirement salary. In the event that a judge entitled to retirement pay shall die without having elected an optional mode of payment, ~~his widow~~ the surviving spouse shall be entitled to payments as provided by the first option as set forth in subsection 5a of this section. Judicial retirement salary payable according to one of the foregoing optional modes of payment shall be paid in like manner as the full judicial retirement salary is paid. Any judge who retired prior to the effective date of the amendment to this section as provided for in chapter 222 of the 1961 Session Laws, and otherwise eligible for the optional modes of payment herein provided for, may apply for one of the optional modes of payment by written declaration to the director of the office of management and budget, provided, however, such judge shall repay to the state treasury the amount of money he has drawn since the date of his retirement in excess of what he would have drawn if he had chosen the optional mode of payment now applied for at the date of his retirement.

SECTION 37. AMENDMENT. Section 27-17-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-17-02. Retention of assessments from judges' salaries - Withdrawal of sums so retained.

1. Every judge of the supreme court or of the district court shall be subject to a judicial retirement assessment in the amount of five percent of his salary during the first twenty years of his service as such judge, from and after the effective date of this section, which amount shall be deducted, withheld and retained by the state of North Dakota. In computing the period of assessment, every judge shall be credited with all previous years in which judicial retirement assessments have been deducted and withheld from his salary.
2. In lieu of receiving judicial retirement salary under this chapter, a judge of the supreme court or a judge of the district court, or in the event of ~~his~~ the judge's death, ~~his widow~~ the surviving spouse or legal representative, upon application to the state auditor at any time after he ceases to be such judge and without having made application for and received judicial retirement salary under this chapter, shall be entitled to receive the amount of judicial retirement assessments heretofore or hereafter deducted and withheld by the state of North

Dakota. If such judge has received judicial retirement salary under this chapter, the amount of judicial retirement assessments deducted and withheld by the state of North Dakota in excess of judicial retirement salary received by such judge, shall be payable, in the event of his death, but not otherwise, to his widow the surviving spouse if living, otherwise to his legal representative.

3. If any former judge, after having withdrawn judicial retirement assessments withheld by the state of North Dakota, shall thereafter become a judge of the supreme court or of the district court of this state, he may, at his election, within one year after becoming such judge, reinstate his prior years of service by returning to the fund the amount withdrawn by him, with simple interest at the rate of four percent per annum from the time of such withdrawal.

SECTION 38. AMENDMENT. Section 28-21-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-12. Notice of levy - Service - Contents. In all cases of levy upon personal property, the sheriff or other officer must give notice thereof by copy to the debtor, his the debtor's attorney, agent, or wife spouse, or, failing to find anyone of these conveniently, to such child as is described in section 28-22-11. Such notice must have written or printed upon its face the further notice to the debtor, that if exemptions are claimed or demanded, such claim must be made within ten days after service of notice.

SECTION 39. AMENDMENT. Section 28-22-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-11. Wife Spouse or child over sixteen may act. If in any case the debtor neglects or refuses, or for any cause fails, to claim the whole or any of the exemptions to which he the debtor is entitled, his wife a spouse may make such claim or demand, select and choose the property, select and designate one of the appraisers, and do all other acts necessary in the premises the same and with like effect as the debtor himself might do, and if she the spouse neglects, refuses, or for any cause fails so to do in whole or in part, then one of the children sixteen years of age or upwards, who is a member of the family, may do so in like manner and with like effect.

SECTION 40. AMENDMENT. Section 32-04-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-04-12. What obligations cannot be enforced specifically. The following obligations cannot be enforced specifically:

1. An obligation to render personal service.
2. An obligation to employ another in personal service.

3. An agreement to submit a controversy to arbitration.
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so.
5. An agreement to procure the act or consent of the wife spouse of the contracting party or of any other third person.
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

SECTION 41. AMENDMENT. Section 34-07-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-07-16. Prohibited employments and occupations of minors. No minor under the age of sixteen years shall be employed or permitted to work in:

1. Any employment involving the use of any power driven machinery; but this prohibition shall not apply to the use of (a) office machines, such as adding machines or typewriters; (b) tagging, pricing, or similar machines used in retail stores; (c) domestic-type machines used in food service operations, such as toasters, coffee grinders, milk shake blenders; or (d) machines used in service stations such as those in connection with car cleaning, washing, or polishing, or in the dispensing of gasoline or oil, provided, however, that no work may be done in connection with cars and trucks if such work involves the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with removable retaining ring.
2. Construction work of any kind.
3. Lumbering or logging operations.
4. Sawmills or planing mills.
5. The manufacture, disposition, or use of explosives.
6. Any capacity which requires the adjusting of any belt to any machinery or the oiling, wiping, or cleaning of any machinery.
7. Any employment which requires the operation, or the assisting in the operation, of any power driven woodworking machinery or emery or polishing wheels used for polishing metal.
8. The operation of stamping machines in sheet metal and tinware manufacturing.

9. The operation of stamping machines in washer and nut factories operating corrugating rolls such as are used in roofing factories.
10. The operation of any steam boiler, steam machinery, or other steam generating apparatus.
11. Repealed by S.L. 1975, ch. 299, § 2.
12. The operation or assisting in the operation of dough brakes or cracker machinery of any description.
13. The operation of wire or iron straightening machinery.
14. The operation or assisting in the operation of rolling mill machinery, punches, or shears, or washing, grinding, or mixing mills, or calendar rolls in rubber manufacture.
15. The operation or assisting in the operation of laundry machinery.
16. Preparing any composition in which dangerous or poisonous acids are used.
17. The manufacture of paints, colors, or white lead.
18. Operating or assisting in the operation of passenger or freight elevators.
19. Any mine or quarry.
20. The manufacture of goods for immoral purposes.
21. Any other employment not herein specifically enumerated that may be considered dangerous to his life or limb or in which his health may be injured or his morals depraved.

Nothing contained in this section shall prohibit a minor from doing ordinary farm labor or from operating farm machinery. No ~~female~~ person under sixteen years of age shall be employed in any capacity if such employment compels ~~her~~ the person to remain standing constantly. This section shall not prevent the education of a minor in music nor the employment of a minor as a singer or musician in a church, school, or academy, or in any school or home talent exhibition given by the people of a local community.

SECTION 42. AMENDMENT. Subsection 7 of section 37-01-40 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Veteran" means a person, ~~including women~~, who served in the active military forces, during a period of war or who received the armed forces expeditionary or other campaign service medal during an emergency condition and who was

discharged or released therefrom under honorable conditions. The term "veteran" also includes a person who died in active military forces.

SECTION 43. AMENDMENT. Section 37-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-02-01. Militia - How constituted - Exceptions. All able-bodied male citizens, and all able-bodied males persons of foreign birth who have declared their intention to become citizens, who are more than eighteen, and less than forty-five, years of age, and who are residents of this state, shall constitute the militia, unless exempted by the laws of the United States, or by the laws of this state.

SECTION 44. AMENDMENT. Section 37-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-07-01. Original enlistments in national guard - Qualifications. Any male person who is a citizen of the United States, or who has declared his intention to become a citizen, if within the ages set forth in the National Defense Act of 1920, as amended, able-bodied, free from disease, of good character, and of temperate habits, may be originally enlisted in the national guard of this state under the restrictions contained in this title for a term of not less than three years and as provided by national guard regulations promulgated by the secretary of defense.

* SECTION 45. AMENDMENT. Section 37-12-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-12-01. Governor may organize, equip, and maintain North Dakota state guard - Composition - Regulations governing. Whenever fifty percent of the national guard of this state is in active federal service, the governor, by proclamation, may organize, equip, and maintain such a military force as he may deem necessary for the proper defense of this state. Such military force shall be organized, equipped, and maintained under such rules and regulations as may be prescribed by the secretary of defense and by the provisions of this chapter. It shall be composed of commissioned officers and of such able-bodied male citizens as shall volunteer for service therein and shall be known as the North Dakota state guard. Such force shall have a distinctive uniform.

** SECTION 46. AMENDMENT. Section 37-15-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-02. Object of soldiers' home. The object of the soldiers' home shall be to provide a home and subsistence for:

1. All honorably discharged United States soldiers, sailors, marines, and coast guard and feminine members of the armed services who have served the United States in any of its wars or military expeditions and who are disabled by

* NOTE: Section 37-12-01 was repealed by section 2 of Senate Bill No. 2189, chapter 389.

** NOTE: Section 37-15-02(2) was also amended by section 1 of House Bill No. 1113, chapter 391.

disease, wounds or otherwise and do not have sufficient means or ability to support themselves, and honorably discharged members of the North Dakota national guard mustered into federal service in 1916 and who served on the Mexican border and all honorably discharged soldiers of the North Dakota national guard who heretofore or hereafter may become permanently disabled from any cause while in line and discharge of duty.

2. The wives and widews husband, wife, or surviving spouse of those mentioned in subsection 1 providing they meet the requirements for admission under the provisions of section 37-15-10.

* SECTION 47. AMENDMENT. Section 37-15-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-10. Admittance to soldiers' home - Requirements governing.

1. No applicant shall be admitted to the soldiers' home unless he or she has been a bona fide resident of this state for at least three years next preceding his or her application for admission thereto. The three-year residency immediately preceding application may be waived if the applicant served in a North Dakota regiment or was accredited to the state of North Dakota during a war period.
2. All honorably discharged soldiers of the North Dakota national guard who heretofore or hereafter may become permanently disabled from any cause while in line and discharge of duty and are not able to support themselves, due to aforesaid disabilities, may be admitted to the North Dakota soldiers' home in accordance with the laws for admission of others and under such rules and regulations as the administrative committee on veterans' affairs may adopt.
3. The husband, wife, or widew surviving spouse of a United States or North Dakota serviceman mentioned in subsection 1 of section 37-15-02 may be admitted upon the same footing as ~~her husband their spouse~~; provided, however, that such husband, wife, or widew surviving spouse shall have entered into the contract of marriage to ~~her husband their spouse~~ at least five years prior to date of application or prior to the date necessary for ~~her~~ the husband, wife, or surviving spouse to obtain a United States pension and shall have attained the age of forty-five years at date of application.
4. No person shall be admitted to the home until he or she shall have made formal application and furnished such proof as may be required by the administrative committee on veterans' affairs and such application shall have been

* NOTE: Section 37-15-10(3) was also amended by section 2 of House Bill No. 1113, chapter 391.

approved by the committee or a board of officers of the institution which they shall designate.

5. When a member of the home who is not eligible for veterans' administration hospitalization and care becomes unable from any cause to care for himself or herself under the rules and regulations prescribed by the administrative committee on veterans' affairs for the admission and care of members in the home, he or she shall become a charge of the county of residence at the time of admission. No individual shall gain or lose legal residence by reason of residence in or being a member of the soldiers' home.

SECTION 48. AMENDMENT. Section 44-08-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-17. Political subdivisions authorized to purchase insurance on the life of law enforcement officer - Benefits payable to dependent survivor. Any political subdivision may purchase insurance on the life of a law enforcement officer employed by that political subdivision. Such insurance policy shall be purchased from an insurance company licensed to do business in this state. If the insurance is purchased, the officer insured thereunder may designate his dependent survivor or survivors to whom the death benefit provided under the policy shall be paid. The word "dependent" shall mean that the deceased officer provided some financial support within one year before his death to the survivor and shall be liberally construed for the purposes of this section. In the event the officer has not designated ~~his~~ a dependent survivor or survivors, the death benefit payable shall be paid to ~~his~~ the closest survivor in the following order:

1. ~~Wife~~ Spouse.
2. Children.
3. Parent.
4. Brother or sister.

However, if there is more than one qualifying survivor in categories 2, 3, or 4, the death benefit shall be paid in equal shares to the survivors in that category. The death benefit provided by an insurance policy purchased pursuant to this section shall not exceed the amount of ten thousand dollars on the life of one law enforcement officer. Any death benefit paid due to purchase of an insurance policy under the provisions of this section shall be in addition to any benefits paid due to the death of that officer under any other provisions of law.

SECTION 49. AMENDMENT. Section 50-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-02-01. Residence of married woman person. The residence of a married woman person for the purpose of this title follows that of her husband if he has any within or without the state, except that after uninterrupted separation without divorce for a period of one full year a married woman may establish residence in this state for relief purposes. A marriage between a woman who has residence within the state and a man who has no residence within or without the state shall not divest such woman of residence within the state for the purposes of poor relief until she acquires a new residence elsewhere. If a husband deserts his wife within one year after marriage, the wife may reacquire such residence as she had in this state at the time of her marriage chapter is the same as if unmarried. A person is not divested of residence in this state for purposes of poor relief until a new residence is acquired elsewhere.

SECTION 50. AMENDMENT. Section 50-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-02-03. Residence of legitimate or illegitimate children Child's residence. The residence of children a child for the purposes of this title chapter shall be as follows:-

- 1- That of a legitimate child follows that of the father, if he has any residence within the state, until the child gains a residence of his own. If the father has no residence, the residence of such child follows that of the mother, if she has any.
- 2- That of an illegitimate child follows that of the mother if at the time of the birth she had any residence within the state that of the custodial parent if that parent has any residence within the state, until the child gains a residence of its own. If the custodial parent has no residence, the residence of the child follows that of the other parent. The residence of a child shall not be in the place where he was born unless his parent or parents had a residence therein at the time of such birth.

SECTION 51. AMENDMENT. Section 50-02-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-02-04. Residence in counties - How gained. If no type of public assistance or poor relief, whether county, state, or federal, has been received, residence in a county, for poor relief purposes, shall be gained as follows:

1. Each male person and each unmarried female over the age of eighteen years, who has resided one year continuously in any county in this state, shall be deemed to have residence in such county.
2. Each person who has resided one year continuously in the state, but not in any one county, shall have a residence

in the county in which he or she has longest resided within such year.

3. Every minor not emancipated and settled in his own right shall have the same residence as the parent with whom he has last resided.

For the purposes of this section the time spent while receiving institutional care in any state licensed home for the aged, infirm, neglected, or indigent shall not be included in the computation of time necessary to establish residence hereunder.

SECTION 52. AMENDMENT. Section 54-01-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01-26. Residence - Rules for determining. Every person has in law a residence. In determining the place of residence, the following rules shall be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the ~~father~~ supporting parent during his or her life, and after ~~his~~ the supporting parent's death, the residence of the ~~mother, while she remains unmarried~~ other parent is the residence of the unmarried minor children.
5. The residence of the husband is presumptively the residence of the wife except in the case of establishing residence for voting purposes. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.
7. The residence can be changed only by the union of act and intent.

Approved April 14, 1983

CHAPTER 173

HOUSE BILL NO. 1440
(Representatives Black, Conmy, E. Pomeroy)
(Senators Stenehjelm, Wenstrom, Heigaard)

HUMAN RIGHTS ACT

AN ACT to provide a human rights act to declare a state policy against discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with respect to marriage or public assistance; to prevent and eliminate discrimination in employment relations, public accommodations, public services, and credit transactions; and to repeal section 34-01-19 of the North Dakota Century Code, relating to employment discrimination.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. State policy against discrimination. It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to marriage or public assistance; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination, or coerce others to discriminate.

SECTION 2. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means over the age of forty and under the age of seventy.
2. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
3. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with regard to marriage or public assistance 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 harrasment.

- a. Sexual harrasment 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:
 - (1) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
 - (2) 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
 - (3) That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, 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 harrasment and fails to take timely and appropriate action.
4. "Employee" means a person who performs services for an employer, who employs ten 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.
5. "Employer" means a person within the state who employs ten or more full-time employees for more than one quarter of

the year, and a person wherever situated who employs ten or more employees whose services are to be partially or wholly performed in the state.

6. "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.
7. "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.
8. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.
9. "Person" means an individual, partnership, association, corporation, 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.
10. "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.
11. "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.
12. "Real estate broker" and "real estate salesman" mean a real estate broker and real estate salesman as defined in section 43-23-06.1.
13. "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.

- 14 "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
15. "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 3. Employer's discriminatory practices. It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance. This Act does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least twenty-seven thousand dollars.

SECTION 4. Employment agency's discriminatory practices. It is a discriminatory practice for an employment agency to accord adverse or unequal treatment to a person in connection with an application for employment, referral, or request for assistance in procurement of employees because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

SECTION 5. Labor organization's discriminatory practices. It is a discriminatory practice for a labor organization to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline a member; or to accord adverse, unlawful, or unequal treatment to a person with respect to the person's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or condition of employment because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance.

SECTION 6. Certain employment advertising deemed discriminatory. It is a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age, physical or mental handicap, or status

with respect to marriage or public assistance are unwelcome, objectionable, not acceptable, or not solicited.

SECTION 7. Requiring security clearance not discriminatory. Notwithstanding sections 3 through 6 of this Act, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, for an employer to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment in a position if the occupancy of the position, or access to the premises upon which the duties of the position is performed, is subject to a requirement imposed in the interest of the national security of the United States under a security program administered under a statute of the United States or an executive order of the president and the individual has not fulfilled or has ceased to fulfill that requirement.

SECTION 8. Qualification based on religion, sex, national origin, physical or mental handicap or marital status. Notwithstanding sections 3 through 6 of this Act, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment, on the basis of religion, sex, national origin, physical or mental handicap, or marital status in those circumstances where religion, sex, national origin, physical or mental handicap, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

SECTION 9. Seniority, merit, or other measuring systems and ability tests not discriminatory. Notwithstanding sections 3 through 6 of this Act, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations provided that the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance for an employer to give and to act upon the results of any professionally developed ability test, provided that the test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance.

SECTION 10. Employment of individual - Exceptions - Physical examination - Investigation of medical history.

1. Sections 3 through 6 of this Act do not apply to business policies or practices relating to the employment of an individual by the individual's parent, grandparent, spouse, child, or grandchild, or in the domestic service of a person.
2. The employment of one person in place of another, standing by itself, shall not be evidence of a discriminatory practice.
3. It is not discriminatory practice for an employer, employment agency, or labor organization to:
 - a. Require a person to undergo physical examination for the purpose of determining the person's capability to perform available employment; or
 - b. Conduct an investigation as to the person's medical history for the purpose of determining the person's capability to perform available employment.

SECTION 11. Rights of veterans. Nothing contained in sections 3 through 6 of this Act repeals or modifies a federal, state, or local statute, regulation, or ordinance creating special rights or preference for veterans.

SECTION 12. Discriminatory housing practices by owner or agent. It is discriminatory practice for an owner of rights to housing or real property or the owner's agent or a person acting under court order, deed or trust, or will to:

1. Refuse to transfer an interest in real property or housing accommodation to a person because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance;
2. Discriminate against a person in the terms, conditions, or privileges of the transfer of an interest in real property or housing accommodation because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance; or
3. Indicate or publicize that the transfer of an interest in real property or housing accommodation by persons is unwelcome, objectionable, not acceptable, or not solicited because of a particular race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance.

SECTION 13. Discriminatory housing practice by financial institution or lender. It is a discriminatory practice for a person, or agent or employee of the person, who lends or provides other financial assistance for the purchase, lease, acquisition, construction,

rehabilitation, repair, or maintenance of real property to discriminate in lending or financial assistance decisions, or in the extension of services in connection therewith, based on the race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance of the person seeking the loan or financial assistance.

SECTION 14. Public accommodations - Discriminatory practices. It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person access to the use of any benefit from the services and facilities of the public assistances; or to give adverse, unlawful, or unequal treatment to a person with respect to the availability to the services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available, because of the person's race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance.

SECTION 15. Public services - Discriminatory practices. It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to a person access to the use of and benefit thereof, or to give adverse or unequal treatment to a person in connection therewith because of the person's race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance.

SECTION 16. Advertising public accommodations or services - Discriminatory practices - Exceptions. It is a discriminatory practice for a person to advertise or in any other manner indicate or publicize that the patronage of persons of a particular race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance is unwelcome, objectionable, not acceptable, or not solicited. This section does not prohibit a notice or advertisement banning minors from places where alcoholic beverages are being served.

SECTION 17. Credit transactions - Discriminatory practices. It is a discriminatory practice, except as permitted or required by the Equal Credit Opportunity Act (15 USC 1691), for a person, whether acting as an individual or for another, to deny credit, increase the charges or fees for or collateral required to secure credit, restrict the amount or use of credit extended, impose different terms or conditions with respect to the credit extended to a person, or item or service related thereto because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance. This section does not prohibit a party to a credit transaction from considering the credit history of a person or from taking reasonable action thereon.

SECTION 18. Concealing, aiding, compelling, or inducing unlawful discrimination - Threats or reprisals. It is a discriminatory practice for a person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by

means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of a device whatever to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against a person by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this Act because of race, color, religion, sex, national origin, age, physical or mental handicap or status with respect to marriage or public assistance.

SECTION 19. Actions. Any person claiming to be aggrieved by a discriminatory practice in violation of this Act 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, 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 were it not for the alleged discriminatory act within three years of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this Act with regard to housing or 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 housing or public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.

SECTION 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 back pay limited to no more than two years from the date the complainant has filed a sworn charge with the equal employment opportunity commission 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 back pay otherwise allowable. In any action or proceeding under this Act the court may grant, in its discretion, the prevailing party a reasonable attorney's fee as part of the costs.

SECTION 21. Optional mediation by department of labor. The department of labor may receive complaints of discriminating employment practices under this Act and shall have sixty days to negotiate settlements to the extent acceptable to the parties involved. This Act does not prohibit or require a person to file a complaint with the department of labor with regard to alleged discriminating employment practices before using the provisions of this Act.

SECTION 22. REPEAL. Section 34-01-19 of the North Dakota Century Code is hereby repealed.

Approved April 14, 1983

CHAPTER 174

SENATE BILL NO. 2335
(Senator Olson)
(Representative Unhjem)

MARRIAGE LICENSE REQUIREMENTS

AN ACT to repeal subsection 5 of section 14-03-17 of the North Dakota Century Code, relating to an application for a marriage license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. REPEAL. Subsection 5 of section 14-03-17 of the North Dakota Century Code is hereby repealed.

Approved March 23, 1983

* NOTE: Section 14-03-17 was amended by section 1 of House Bill No. 2237, chapter 175.

CHAPTER 175

SENATE BILL NO. 2237
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Health)

PREMARITAL SEROLOGICAL SYPHILIS TEST

AN ACT to amend and reenact sections 14-03-17 and 14-03-20 of the North Dakota Century Code, relating to the requirement of a premarital serological test for syphilis; and to repeal sections 14-03-12, 14-03-13, 14-03-14, 14-03-15, and 14-03-16, relating to the requirement of a premarital serological test for syphilis.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 14-03-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-17. Application for license. When application is made to any county judge of this state for a marriage license, he shall inquire of the applicant upon oath relative to the legality of the contemplated marriage. He may examine other witnesses upon oath. The facts relative to the legality of the marriage may be submitted to the county judge by affidavit. The county judge also shall require each applicant to submit the following facts upon blanks provided by the county:

1. An affidavit of some disinterested, credible person showing that the female and male are over the age of eighteen years. If the female or the male is under the age of eighteen years, the county judge shall require the consent of the parents or guardian, if any, to be given personally, or by a certificate of consent signed by parents or guardian under oath, and sworn to before a notary public or other officer qualified by law to administer oaths.
2. An affidavit showing whether or not either or both of the parties have been divorced. If a decree of divorce has been granted to either or both of the parties, a certified copy of the decree must be filed with the application, and if either or both parties are subject to a subsisting order to provide child support or alimony combined with

* NOTE: Section 14-03-17(5) was repealed by section 1 of Senate Bill No. 2335, chapter 174.

_____ of _____, aged _____ who has _____ been divorced, and of this license and your certificate you will make due return to my office within five days.

Dated at _____ this _____ day of _____, 19__.
(Seal)

County Judge

CERTIFICATE OF MARRIAGE

I hereby certify that the persons named in the foregoing license were by me joined in marriage at _____ county of _____ State of North Dakota, on the _____ day of _____, 19__.

In the presence of

_____) _____
_____) _____

Witnesses

Every certificate of marriage shall be signed by two witnesses to the marriage in addition to the signature of the person who solemnized the marriage. Every license when issued shall have endorsed on it or annexed to it a statement, subscribed by the person issuing the license, stating that the application for the license was accompanied by the physician's certificate and the laboratory statement as required by sections 14-03-12 and 14-03-14. If such compliance was dispensed with, wholly or partly, by order of the district judge, a statement to that effect must be endorsed on or annexed to the license.

SECTION 3. REPEAL. Sections 14-03-12, 14-03-13, 14-03-14, 14-03-15, and 14-03-16 of the North Dakota Century Code are hereby repealed.

Approved March 10, 1983

CHAPTER 176

HOUSE BILL NO. 1454
(Representatives A. Olson, Mushik, Hausauer)
(Senators Redlin, Christensen)

DISPLACED HOMEMAKER PROGRAM

AN ACT to amend and reenact sections 14-06.1-02, 14-06.1-03, 14-06.1-04, 14-06.1-06, 14-06.1-08, 14-06.1-10, 14-06.1-11, 14-06.1-12, 14-06.1-13, 14-06.1-14, and 14-06.1-15 of the North Dakota Century Code, relating to the administration and supervision of the displaced homemaker program; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-06.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-02. Definitions.

1. "Bureau" means job service North Dakota "Department" means the department of public instruction.
2. "Displaced homemaker" means an individual who:
 - a. Has worked in the home, providing unpaid services for household members.
 - b. Has not been gainfully employed for a minimum of two years or has been underemployed.
 - c. Has had, or would have difficulty finding employment.
 - d. (1) Has depended on the income of another person and has lost that income; or
(2) Has depended on government assistance as the parent of dependent children, but who is not eligible for such assistance or is supported by government assistance which is nearing an end
- a. Is at least eighteen years of age;

- b. Has been unemployed or underemployed;
 - c. Has been economically dependent on a spouse, parent, legal guardian, or on governmental income maintenance;
 - d. Wishes to be gainfully employed to become economically independent;
 - e. Lacks basic academic skills to be gainfully employable; and
 - f. (1) Is widowed, divorced, separated, or abandoned; or
(2) Because of the disability of the individual's spouse, parent, or legal guardian, is displaced from the individual's former economically dependent role.
3. "Executive director" "Superintendent" means the executive director of job service North Dakota superintendent of public instruction.

SECTION 2. AMENDMENT. Section 14-06.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-03. Grants - Design and staff. The executive director superintendent is authorized to enter into contracts with and make grants to nonprofit agencies or organizations to carry out the programs, as enumerated in sections 14-06.1-06, 14-06.1-07, 14-06.1-08, 14-06.1-09, and 14-06.1-10. Service centers shall be designed and staffed as follows:

1. The service centers shall provide personal and employment counseling; interpersonal skill building; job readiness, job search, and employability training; information and community referral services; and appropriate public information and community education.
2. Each center shall be organized to include an outreach component capable of delivering the full range of services to groups of displaced homemakers in rural communities.
3. Counseling services shall be delivered via individual, task oriented group, and peer support methods. Counseling and guidance shall be provided by qualified staff.
4. To the greatest extent possible, the staffing of the service centers, including supervisory, technical, and administrative positions, shall be by qualified displaced homemakers and others trained to meet the unique needs of displaced homemakers.

SECTION 3. AMENDMENT. Section 14-06.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-04. Sources of funding and in-kind contributions. The ~~executive director~~ superintendent shall explore all possible sources of funding and in-kind contributions from federal, state, local, and private sources in establishing displaced homemaker services.

SECTION 4. AMENDMENT. Section 14-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-06. Job training program - Development - Stipend for trainees. The service centers shall have job readiness training programs for displaced homemakers. The ~~service centers department~~ may contract or enter into cooperative agreements, or both, with the state board for vocational education, other local, state, and federal government agencies, and private employers to develop training programs, or to utilize existing training programs, for available jobs in the public and private sectors for the purpose of promoting self-sufficiency. The job training program may provide a stipend for trainees.

SECTION 5. AMENDMENT. Section 14-06.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-08. Assistance in finding permanent employment for trainee. Service centers shall be are responsible for assisting in preparing the trainee for permanent employment. The ~~service centers superintendent~~ shall work in cooperation with the executive director, other agencies, or the prime sponsors under the Comprehensive Employment and Training Act of 1973 in the area of the centers to secure employment for displaced homemakers appropriate agencies.

SECTION 6. AMENDMENT. Section 14-06.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-10. Regulations - Eligibility for programs - Level of stipends - Sliding fee scale for service programs. The ~~executive director superintendent~~ is authorized to adopt rules to implement this chapter, shall cooperatively establish eligibility requirements with appropriate agencies in accordance with local, state, and federal program regulations to interpret the eligibility of persons for the job readiness training and other programs of the service centers, to establish the level of stipends for the job training programs described in section 14-06.1-06, to establish a sliding fee scale for the service programs described in sections 14-06.1-03 and 14-06.1-09, and to handle other matters as the executive director superintendent deems necessary. Any interpretation of eligibility for services should have as first priority the service of displaced homemakers, as identified in section 14-06.1-02.

SECTION 7. AMENDMENT. Section 14-06.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-11. Delegation of authority. The ~~executive director~~ superintendent may delegate any or all of the authority granted by this chapter ~~to whatever division within the bureau the director as the superintendent~~ deems appropriate.

* SECTION 8. AMENDMENT. Section 14-06.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-12. Citizen advisory structure. The ~~executive director~~ superintendent shall establish an advisory body to the department which shall consist of citizen members representing each planning region of the state. Membership may represent displaced homemakers, local service providers, appropriate agencies, employers, educators, and the general public. The advisory body shall provide public information and community education regarding the program and appropriate recommendations to the ~~executive director~~ superintendent regarding the planning, operation, and evaluation of the activities mandated by this chapter. This body shall annually provide written evaluation of the program to the ~~executive director~~ superintendent who will provide this evaluation to the legislative assembly each biennium in addition to the evaluation required in accordance with section 14-06.1-13.

SECTION 9. AMENDMENT. Section 14-06.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-13. Program evaluation. The ~~executive director~~ superintendent, in cooperation with the advisory body, the administrator of each center, and with appropriate heads of nonprofit agencies or organizations carrying out the programs, shall by January ~~15, 1983~~ 30, 1985, prepare and furnish to the legislative assembly an evaluation report of all activities conducted pursuant to this mandate. Subsequent evaluations shall be provided in like fashion each biennium.

SECTION 10. AMENDMENT. Section 14-06.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-14. Displaced homemaker account - Creation. There is hereby created in the ~~bureau~~ department, a displaced homemaker's account. The ~~executive director~~ superintendent may apply for and accept any funds, grants, gifts, or services made available for displaced homemakers by any agency or department of the federal government or any private agency or individual. ~~Such~~ The funds, grants, gifts, dissolution of marriage-fee assessments, or moneys received from services received pursuant to this section shall be placed in the

* NOTE: Section 14-06.1-12 was also amended by section 15 of House Bill No. 1058, chapter 82.

displaced homemaker account and may be spent within the limits of legislative appropriations.

SECTION 11. AMENDMENT. Section 14-06.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-15. Petition for dissolution of marriage - Fee assessment. There ~~should~~ shall be assessed against the petitioner a fee of ~~twenty~~ fifty dollars upon the filing of a petition for dissolution of marriage, annulment, or separation from bed and board. All such fees collected shall be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by this chapter.

SECTION 12. APPROPRIATION.

1. There is hereby appropriated out of any moneys in the displaced homemaker account in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much thereof as may be necessary to the superintendent of public instruction for the purpose of providing services for displaced homemakers under this Act for the biennium beginning July 1, 1983, and ending June 30, 1985.
2. There is hereby appropriated out of any additional funds which may become available through grants, gifts, or other sources to the superintendent of public instruction for the purpose of providing services for displaced homemakers for the biennium beginning July 1, 1983, and ending June 30, 1985. Funds appropriated pursuant to this subsection may be spent only upon approval of the emergency commission.

Approved April 6, 1983

CHAPTER 177

SENATE BILL NO. 2084
(Peterson)

WARRANTLESS ARRESTS FOR DOMESTIC VIOLENCE

AN ACT to amend and reenact section 14-07.1-06 and subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to warrantless arrests for domestic violence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-06. Penalty for violation of a protection order - Arrest without warrant. Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order shall be a class A misdemeanor and also constitute criminal contempt of court subject to penalties therefor. A peace officer may arrest any person without a warrant if ~~the officer has probable cause to believe the:~~

1. The person has committed the offense of violating a protection order, whether or not the violation was committed in the presence of the officer; or
2. The person, if the peace officer has probable cause to believe the person within the preceding four hours has assaulted his or her spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

No peace officer shall be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

SECTION 2. AMENDMENT. Subsection 1 of section 29-06-15 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A peace officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision a crime shall be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
 - g. For domestic violence pursuant to section 14-07.1-06.

Approved April 8, 1983

CHAPTER 178

HOUSE BILL NO. 1364
(A. Olson, R. Meiers, Swiontek, Stofferahn)

CHILD SUPPORT OBLIGATION ENFORCEMENT

AN ACT to amend and reenact sections 14-08.1-01 and 14-08.1-02 of the North Dakota Century Code, relating to the enforcement of child support obligations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-08.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-08.1-01. Liability for support. A person legally responsible for the support of a child under the age of eighteen years who is not subject to any subsisting court order for the support of the child and who fails to provide support, subsistence, education, or other necessary care for the child, regardless of whether the child is not or was not in destitute circumstances, is liable for the reasonable value of physical and custodial care or support which has been furnished to the child by any person, institution, agency, or county social service board. Any payment of public assistance money made to or for the benefit of any dependent child creates a presumption that such payment equals the reasonable value of physical and custodial care or support.

SECTION 2. AMENDMENT. Section 14-08.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-08.1-02. Procedure for action. An obligation for the support of a child under section 14-08.1-01 ~~shall be determined~~ may be asserted by a civil action. The action may be commenced in the district court of the county wherein the child or the defendant resides, or may be found, or wherein the defendant has assets subject to attachment, garnishment, or execution.

Approved March 4, 1983

CHAPTER 179

HOUSE BILL NO. 1274
(Representatives R. Anderson, R. Meiers, Wentz)
(Senator Maixner)

GRANDPARENTAL VISITATION RIGHTS

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to grandparental rights of visitation to unmarried minors; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

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

Grandparental rights of visitation to unmarried minors. The grandparents and great grandparents of an unmarried minor may be granted reasonable visitation rights to the minor during the period of minority by the district court upon a finding that visitation would be in the best interests of the minor and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the grandparents or great grandparents and the minor, and the minor's parents, prior to the application. This section does not apply if the minor has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to this section prior to the adoption of the minor are automatically terminated upon the adoption. If any district court of this state has jurisdiction over the custodial placement of the minor child or children involved by virtue of any prior proceedings, the rights conferred by this section may be enforced through motion under the prior proceeding. If no district court has jurisdiction, a proceeding to enforce grandparental rights must be brought as a civil action and venued in the county of residence of the minor children. The custodial parent must be named as defendant. This section may not be construed to require joinder of grandparents in any proceeding to terminate parental rights if the joinder is not otherwise required.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 10, 1983

CHAPTER 180

SENATE BILL NO. 2306
(Senator Olson)
(Representative Retzer)

WAGE ASSIGNMENT FOR CHILD SUPPORT

AN ACT to create and enact two new sections to chapter 14-09 of the North Dakota Century Code, relating to child support.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

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

Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Employer" means an individual or entity which has a duty to pay wages to an obligor, whether or not an employer-employee relationship exists, and includes the state and federal governments and the political subdivisions of the state.
2. "Wage" means any form of earned income, whether commissions, earnings, salaries, pensions, annuities, retirement benefits, return of contributions, draws, shares, profits, bonuses, dividends, or otherwise, whether rendered in cash or in-kind, and specifically includes benefit payments from insurance policies as well as all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

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

Voluntary wage assignment for support - Limitations. An obligor may execute a voluntary assignment of current or future wages due the obligor from an employer in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An assignment made under this section is binding on the employer one week after service upon the employer by personal service or by certified mail of a true copy of the executed assignment. The employer shall deduct the sum or sums specified and pay them as specified by the assignment. In addition, the employer may deduct a fee of one dollar per month to cover the employer's expense involved in holding and transmitting the assignment. Compliance by an employer with an assignment issued under this section discharges the employer's liability to the obligor for that portion of the obligor-employee's wages. The employer may not use the assignment as a basis for any disciplinary action against the obligor.

Approved April 11, 1983

CHAPTER 181

SENATE BILL NO. 2421
(Christensen)

MINIMUM CONTRIBUTIONS FOR CHILD SUPPORT

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to a scale of minimum contributions for child support.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

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

Scale of suggested minimum contributions.

1. The department of human services shall establish a scale of suggested minimum contributions to assist courts in determining the amount that a parent should be expected to contribute toward the support of the child under this section. The scale shall:
 - a. Include consideration of gross income.
 - b. Authorize an expense deduction for determining net income.
 - c. Designate other available resources to be considered.
 - d. Specify the circumstances which should be considered in reducing support contributions on the basis of hardship.
2. The department shall accept and compile pertinent and reliable information from any available source in order to establish a minimum scale of suggested contributions. Copies of the scale shall be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.
3. The court shall consider the scale of suggested minimum contributions in making a determination of the amount of payment for child support.

Approved April 14, 1983

CHAPTER 182

HOUSE BILL NO. 1129
(Unhjem)

RELEASE OF ADOPTION INFORMATION

AN ACT to amend and reenact section 14-15-16 of the North Dakota Century Code, relating to the issuance of a certified copy of a decree of adoption and the release of identifying information regarding an adult sibling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-15-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-15-16. Hearings and records in adoption proceedings - Confidential nature - Disclosure of identifying and nonidentifying information - Retroactive operation. Notwithstanding any other law concerning public hearings and records:

1. All hearings held in proceedings under this chapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.
2. All papers, records, and information pertaining to the adoption whether part of the permanent record of the court or of a file in the department of human services or in an agency are confidential and may be disclosed only in accordance with this section.
3. Nonidentifying information, if known, concerning undisclosed genetic parents shall be furnished to:
 - a. The adoptive parents at the time of adoptive placement or upon their request.
 - b. ~~The adult~~ An adopted ~~person~~ adult upon written request ~~therefor~~.

In addition, the clerk of the appropriate district court, upon request and payment of the proper fee, shall furnish a certified copy of the decree of adoption to the adoptive parents, the guardian of an adopted minor child, or an adopted adult, provided the decree does not disclose the identity of the genetic parents or the name of the adopted person prior to the adoption proceedings.

4. An adopted person who is twenty-one years of age or over may request the department of human services to secure and disclose information identifying the adopted child's genetic parents or to secure and disclose nonidentifying information not on file with the board or a child-placing agency. The department of human services shall, within five working days of receipt of the request, notify in writing the child-placing agency having access to the information requested of the request by the adopted child. If there has not been established a presumed or adjudicated father under chapter 14-17 then a "genetic parent" includes for the purposes of a request to secure and disclose nonidentifying information not on file with the department or child-placing agency, the alleged father as indicated in the files of the child-placing agency; provided, that there exists in the file information which corroborates the allegation of paternity, including the existence of communications between the alleged father and child-placing agency, or between the alleged father and the natural or adjudicated mother or members of her family, or such other corroborative information permitted by rules adopted by the department of human services.
5. Within three months after receiving notice of the request of the adopted person, the child-placing agency shall make complete and reasonable efforts to notify the genetic parents of the adopted child. The child-placing agency may charge a reasonable fee to the adopted child for the cost of making a search pursuant to this subsection. All communications under this subsection are confidential. For purposes of this subsection, "notify" means a personal and confidential contact with the genetic parents of the adopted child; the personal and confidential contact shall not be by mail and shall be by an employee or agent of the licensed child-placing agency which processed the pertinent adoption, or some other licensed child-placing agency designated by the child-placing agency; the personal and confidential contact shall be evidenced by filing with the department of human services an affidavit of notification executed by the person who notified each genetic parent and certifying that each genetic parent was given the following information:
 - a. The nature of the identifying information to which the agency has access.

- b. The nature of any nonidentifying information requested.
 - c. The date of the request of the adopted child.
 - d. The right of the genetic parent to file, within sixty days of receipt of the notice, an affidavit with the department of human services stating that the identifying information should not be disclosed.
 - e. The right of the genetic parent to file a consent to disclosure with the department of human services at any time.
 - f. The effect of a failure of the genetic parent to file either a consent to disclosure or an affidavit stating that the identifying information should not be disclosed.
6. If the child-placing agency certifies to the department of human services that it has been unable to notify the genetic parent within three months, the identifying information shall not be disclosed to the adopted child. If either genetic parent has at any time filed with the department of human services an unrevoked affidavit stating that the identifying information should not be disclosed, the department of human services shall not disclose the information to the adopted child until the affidavit is revoked by the filing of a consent to disclosure by that parent.
 7. If, within three months, the child-placing agency certifies to the department of human services that it has notified the genetic parents pursuant to subsection 5, the department of human services shall receive the identifying information from the child-placing agency and disclose the information sixty-one days after the date of the latest notice to either genetic parent. This disclosure will occur if, at any time during the sixty-one days, the genetic parent has filed an affidavit with the department of human services stating that the information shall be disclosed and the affidavit has not been revoked by the subsequent filing by the genetic parent of an affidavit that the information shall not be disclosed.
 8. If the genetic parent has died and has not filed an unrevoked affidavit with the department of human services stating that identifying information shall not be disclosed, the information shall be forwarded to and released by the department of human services to the adopted child. If the genetic parent has died, and at any time prior to his death the genetic parent has filed an unrevoked affidavit with the department of human services stating that the identifying information shall not be

disclosed, the adopted child may petition the court of original jurisdiction of the adoption proceeding for an order for release of the identifying information. The court shall grant the petition if, after consideration of the interests of all known persons involved, the court determines that disclosure of the information would be of greater benefit than nondisclosure.

9. Any adopted person twenty-one or more years of age ~~or over~~ whose adoption was finalized in this state or whose genetic parents had their parental rights terminated in this state may request the department of human services to secure and disclose identifying information concerning an adult sibling in the same manner as provided for in subsection 4. Identifying information pertaining exclusively to the adult sibling, whether part of the permanent record of a file in the department of human services or in an agency, ~~shall~~ may be released only upon written consent of ~~that~~ the adult sibling and any living genetic parents of the adult sibling if the adult sibling knows of their identity.
10. Upon application to the department of human services by an adult adopted person or the parent or guardian of a minor adopted child, the department may investigate or cause to be investigated facts necessary to determine the adopted person's eligibility for enrollment as a member of an Indian tribe.
 - a. The department of human services may inquire of any person or agency, including a licensed child-placing agency in North Dakota to assist in the investigation.
 - b. All identifying information obtained by the department of human services shall remain confidential.
 - c. The bureau of Indian affairs may be provided sufficient information obtained from the investigation to determine the eligibility of the adopted person for enrollment in an Indian tribe. Prior to the department's release of information to the bureau of Indian affairs, the department will obtain written assurance from the bureau of Indian affairs that the information provided will remain confidential, and will not be furnished to any unauthorized person or agency.
 - d. The procedure used in contacting the genetic parents of the adopted child shall be a personal and confidential contact. Any necessary contact shall be made by an employee or agent of a licensed child-placing agency or the department of human services. The information requested of the genetic parents shall be limited to that information necessary

to make a determination of the adopted person's eligibility for enrollment in an Indian tribe.

- e. The department of human services may charge a reasonable investigation fee.
- ~~11.~~ 11. No person may be required to disclose the name or identity of either an adoptive parent or an adopted child except:
- a. In accordance with this section;
 - b. As authorized in writing by the adoptive parent or the adopted child;
 - c. Upon order of the court for good cause shown in exceptional cases.
- ~~12.~~ 12. The provisions of this section governing the release of identifying and nonidentifying adoptive information apply to adoptions completed before and after July 1, 1979.
- ~~13.~~ 13. Any child-placing agency discharging in good faith its responsibilities under this section is immune from any liability, civil or criminal, that otherwise might result.
- ~~14.~~ 14. The department of human services shall make such reasonable rules and regulations as are necessary to carry out the purposes of this section.

Approved March 8, 1983

CHAPTER 183

HOUSE BILL NO. 1291
(Unhjem)

PATERNITY EVIDENCE

AN ACT to amend and reenact subsection 3 of section 14-17-11 of the North Dakota Century Code, relating to evidence concerning paternity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 14-17-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. Verified documentation of the chain of custody of the blood specimens is competent evidence to establish the chain of custody. A verified report obtained from an examiner appointed pursuant to section 14-17-10 shall be admitted at trial unless a challenge to the testing procedures or the results of blood analysis has been made before trial.

Approved March 4, 1983