

DOMESTIC RELATIONS AND PERSONS

CHAPTER 190

SENATE BILL NO. 2174
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

UNIFORM PREMARITAL AGREEMENT ACT

AN ACT to adopt the Uniform Premarital Agreement Act, relating to the legal requirements for premarital agreements; and to amend and reenact section 9-06-04 of the North Dakota Century Code, relating to contracts which must be written to be valid.

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

SECTION 1. Definitions. As used in sections 1 through 8:

1. A person has "notice" of a fact if the person has knowledge of it, receives a notification of it, or has reason to know that it exists from the facts and circumstances known to the person.
2. "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.
3. "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

SECTION 2. Formalities. A premarital agreement must be a document signed by both parties. It is enforceable without consideration.

SECTION 3. Content.

1. Parties to a premarital agreement may contract with respect to:
 - a. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.
 - b. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a

security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.

- c. The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event.
- d. The modification or elimination of spousal support.
- e. The making of a will, trust, or other arrangement to carry out the provisions of the agreement.
- f. The ownership rights in and disposition of the death benefit from a life insurance policy.
- g. The choice of law governing the construction of the agreement.
- h. Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

2. The right of a child to support may not be adversely affected by a premarital agreement.

SECTION 4. Effect of marriage. A premarital agreement becomes effective upon marriage.

SECTION 5. Amendment - Revocation. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

SECTION 6. Enforcement.

1. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:
 - a. That party did not execute the agreement voluntarily; or
 - b. The agreement was unconscionable when it was executed and, before execution of the agreement, that party:
 - (1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
 - (2) Did not voluntarily sign a document expressly waiving any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

- (3) Did not have notice of the property or financial obligations of the other party.
2. If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.
3. An issue of unconscionability of a premarital agreement is for decision by the court as a matter of law.

SECTION 7. Enforcement of unconscionable provisions. Notwithstanding the other provisions of this Act, if a court finds that the enforcement of a premarital agreement would be clearly unconscionable, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provisions, or limit the application of an unconscionable provision to avoid an unconscionable result.

SECTION 8. Enforcement - Void marriage. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

SECTION 9. Limitation of actions. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

SECTION 10. AMENDMENT. Section 9-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9-06-04. Contracts invalid unless in writing - Statute of frauds. The following contracts are invalid, unless the same or some note or memorandum thereof is in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;
2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 22-01-05;
3. An agreement made upon consideration of marriage other than a mutual promise to marry;
4. An agreement for the leasing for a longer period than one year, or for the sale, of real property, or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing subscribed by the party sought to be charged.

CHAPTER 191

SENATE BILL NO. 2438
(Senators Stenehjelm, J. Meyer, Christensen)
(Representatives Conmy, Kuchera)

DIVORCE AND SEPARATION RESIDENCY

AN ACT to amend and reenact sections 14-05-17 and 14-06-06 of the North Dakota Century Code, relating to residency requirements for divorce and for separation.

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

SECTION 1. AMENDMENT. Section 14-05-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-17. Residence requirements. A divorce ~~must~~ may not be granted unless the plaintiff in good faith has been a resident of the state for ~~twelve~~ six months next preceding the ~~commencement of the action~~ entry of the decree of divorce.

SECTION 2. AMENDMENT. Section 14-06-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06-06. Residence requirements. ~~No action shall be brought or maintained under the provisions of this chapter~~ A decree of separation may not be granted unless the plaintiff in good faith has been a resident of this state for ~~twelve~~ six months next preceding the ~~commencement of the action~~ entry of the decree of separation.

Approved April 11, 1985

CHAPTER 192

HOUSE BILL NO. 1486
(Kretschmar)

DIVORCE PROPERTY DIVISION ENFORCEMENT

AN ACT to create and enact a new section to chapter 14-05 and a new section to chapter 14-06 of the North Dakota Century Code, relating to orders dividing property in divorce and separation enforceable by contempt and removing certain exemptions from process upon execution of divorce or separation judgments ordering division of property; and to amend and reenact section 28-22-01 of the North Dakota Century Code, relating to property exempt from process.

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

SECTION 1. A new section to chapter 14-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

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

SECTION 2. A new section to chapter 14-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Money judgment to secure division of property enforceable by contempt - Exemptions from process not available. Failure to comply with provisions of a decree of separation relating to distribution of the property of the parties may be punished as civil contempt. A party may also execute on a money judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.

SECTION 3. AMENDMENT. Section 28-22-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-01. Property exempt from all process. Except as hereinafter otherwise provided, the property mentioned in this chapter is exempt to the head of a family, as defined by section 28-22-01.1, from attachment or mesne process and from levy and sale upon execution and from any other final process issued from any court.

Approved April 4, 1985

CHAPTER 193

SENATE BILL NO. 2307
(Senators Mushik, Christensen, Redlin)
(Representatives O'Connell, A. Olson, R. Hausauer)

DISPLACED HOMEMAKER PROGRAM

AN ACT to amend and reenact subsection 2 of section 14-06.1-02 and section 14-06.1-12 of the North Dakota Century Code, relating to the citizen advisory body to 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. Subsection 2 of section 14-06.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Displaced homemaker" means an individual who:

- a. is at least eighteen years of age Has worked in the individual's home providing unpaid services for household members;
- b. Has been or is 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 had or will have difficulty finding employment; and
- ~~f.~~ d. (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.

SECTION 2. AMENDMENT. Section 14-06.1-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-12. Citizen advisory structure - Reimbursement of members. The superintendent shall establish an advisory body to the department which shall consist of one citizen members member representing each planning region of the state and two citizen members to be selected at large. 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 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 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. Advisory body members are entitled to be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at advisory body meetings.

SECTION 3. Continuing 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 per biennium, or so much thereof as may be necessary to the superintendent of public instruction for the purpose of providing services for displaced homemakers under chapter 14-06.1. At least ninety-five percent of the funds appropriated by this subsection must be used by the superintendent for the direct provision of displaced homemaker services.
2. There is hereby appropriated out of any additional funds that may become available through grants, gifts, or other sources to the superintendent of public instruction for the purpose of providing services for displaced homemakers. Unless otherwise required by federal eligibility standards, at least ninety-five percent of the funds acquired and appropriated to the superintendent by this subsection must be used by the superintendent for the direct provision of displaced homemaker services. Funds appropriated pursuant to this subsection may be spent only upon approval of the emergency commission.

Approved April 16, 1985

CHAPTER 194

SENATE BILL NO. 2262
(Senators Christensen, Stenehjem)
(Representative Wentz)

ADULT ABUSE PROTECTION ORDERS

AN ACT to amend and reenact section 14-07.1-02 and subsection 2 of section 14-07.1-03 of the North Dakota Century Code, relating to adult abuse protection orders; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 14-07.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-02. Adult abuse - Protection order.

1. An action for a protection order commenced by a verified application alleging the existence of adult abuse may be brought in district court by any spouse or, family member or, former spouse in the district court, parent, child, persons related by blood, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of an adult abuse protection order. An action may be brought under this section, regardless of whether or not a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.
3. Service shall be made upon the respondent not less than five days prior to the hearing. If service cannot be made, the court may set a new date.

4. Upon a showing of actual or imminent adult abuse, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, or injuring any other party or ~~minor children of the parties~~ person.
 - b. Excluding either party the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of the other another person against whom the adult abuse is occurring, or from an adult abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with an adult abuse program or other agency which provides professional services which the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports shall be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys fees and costs.
5. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
6. No order or agreement under this section shall affect title to any real property in any matter.

SECTION 2. AMENDMENT. Subsection 2 of section 14-07.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. An ex parte temporary protection order may include:
 - a. Restraining any party from committing acts of abuse on ~~the other~~ another person.
 - b. Excluding any party the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of the other another person, or from an adult abuse shelter care facility.

- c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 28, 1985

CHAPTER 195

SENATE BILL NO. 2368
(Senators Stenehjem, Christensen)
(Representatives Cleveland, Unhjem)

ADULT ABUSE PROGRAMS RECORDS CONFIDENTIAL

AN ACT to create and enact a new section to chapter 14-07.2 of the North Dakota Century Code, relating to the confidentiality of adult abuse program records; to provide a penalty; 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 14-07.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Adult abuse program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in an adult abuse program shall maintain the confidentiality of the:
 - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
 - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from an adult abuse program; and
 - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under an adult abuse program.
2. The information described in subsection 1 is excepted from the public records disclosure requirements of section 44-04-18 and may not be disclosed unless:
 - a. A client consents to the release of information which relates only to that client or the client's dependents;

- b. The agent, employee, or volunteer operating an adult abuse program determines the disclosure of the information necessary for the efficient and safe operation of an adult abuse program; or for the protection of the safety of an employee, agent, volunteer, or client of an adult abuse program; or for the protection of a third party reasonably thought to be in need of protection;
 - c. A court of competent jurisdiction orders the disclosure; or
 - d. An agent, employee, or volunteer working with an adult abuse program has knowledge or reasonable cause to suspect a child has been abused or neglected as is defined by section 50-25.1-02.
3. Any person who violates this section is guilty of an infraction.

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 30, 1985

CHAPTER 196

HOUSE BILL NO. 1509
(Conmy)

PARENTAL DUTY TO SUPPORT CHILDREN

AN ACT to amend and reenact section 14-09-08 of the North Dakota Century Code, relating to the mutual duty to support children.

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

SECTION 1. AMENDMENT. Section 14-09-08 of the 1983 Supplement to 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 the child~~ Parents must give their children support and education suitable to the child's circumstances. ~~If the support and education which the custodial parent of a legitimate child is able to give are inadequate, the other parent must assist the custodial parent to the extent of his or her ability.~~

Approved March 27, 1985

CHAPTER 197

HOUSE BILL NO. 1195
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

CHILD SUPPORT ENFORCEMENT AGENCY NOTIFICATION

AN ACT to create and enact two new sections to chapter 14-09 of the North Dakota Century Code, relating to enforcement of child support orders; to amend and reenact subsection 2 of section 14-08-07 and subsections 1, 2, and 3 of section 14-09-09.1 of the North Dakota Century Code, relating to the procedure for an action for support and transcription of child support orders, and to wage assignments for child support.

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

SECTION 1. AMENDMENT. Subsection 2 of section 14-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. if the recipient is not or ceases to be a resident of the county in which the action was venued, the The court of its own motion or on motion of the state's attorney of either the county of venue or, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the recipient or the obligor may reside from time to time. Thereafter, the provisions of this section shall apply as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.

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

Out-of-state wage withholding orders - Filing requirements. A copy of an order for the withholding of income or wages to satisfy a child support obligation issued by a state other than this state or by a court of the United States may be filed in the office of the

clerk of any district court of any county in this state upon all of the following conditions:

1. The order is authenticated in accordance with the statutes of this state.
2. The obligor under the order resides or is employed in the county of filing.
3. The person or agency seeking to file the order establishes by affidavit that the child support obligation is in arrears at least twenty days.
4. A copy of the order and accompanying documents have been sent to the child support enforcement unit of the department of human services.

SECTION 3. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Effect of filing out-of-state wage withholding order. Upon the filing of the order described in section 2 of this Act, the clerk of court shall treat the order in the same manner as a child support wage assignment order of a district court under section 14-09-09.1.

SECTION 4. AMENDMENT. Subsections 1, 2, and 3 of section 14-09-09.1 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Each judgment containing child support provisions and each order for child support issued by a district court of this state shall include an order directing the obligor to assign such salary currently due or to be due in the future from the obligor's employer or successor employers to the clerk of the court where the judgment is granted or the order issued, in such amount as will be sufficient to meet the child support payments imposed by the court. The order must include a sum to be applied toward the satisfaction of any support arrearages. This wage assignment shall take effect upon application of the person receiving payments or any person or public agency designated to receive such payments, when the requirements of this section have been met. The application shall be a sworn statement which states that the obligor has failed the obligor's failure to make a child support payment in full within twenty days of the due date of such payment. This section does not authorize a clerk of court who receives child support payments as trustee under section 14-08-07 to make such application.
2. The clerk of court, upon application of an authorized person or agency, shall send a notice by certified first-class mail to the last known address of any obligor

who has failed to make the required child support payment within twenty days of its due date. The notice shall be postmarked no later than ten days after the date on which the application was filed and shall inform the obligor of the amount of money that will be withheld from wages and that the wage assignment shall go into effect ten days after the date on which the notice was sent. The obligor may, within that ten-day period, request a hearing on the issue of whether the wage assignment should take effect is based upon a mistake of fact, in which case the wage assignment shall be held in abeyance pending the outcome of the hearing. The district court or its referee shall hold a hearing requested under this section within ten working days after the date of the request.

3. If at the hearing the obligor establishes that extraordinary circumstances prevented fulfillment of the child support obligation and that such circumstances are beyond the control of the obligor, the court may direct that the wage assignment be delayed until such time, within twelve months, as another month's payment is missed. If such a delay is granted, the wage assignment shall, upon application, go into effect if, within the following twelve months, the obligor fails to make in full any payment within twenty days of its due date there has been a mistake in the identity of the obligor or an overstatement of the amount of support stated to be owed by the obligor, the court may order that no wage assignment take effect. In the absence of a showing by the obligor that there has been a mistake of fact, the court shall order that the wage withholding proceed.

Approved March 31, 1985

CHAPTER 198

HOUSE BILL NO. 1221
(Unhjem)

OUT-OF-STATE ADOPTION AGENCIES AND ADOPTEE INSURANCE

AN ACT to permit that an adoption petitioner may be required to show proof of health insurance covering the person to be adopted; and to create and enact a new section to chapter 50-12 of the North Dakota Century Code, relating to license requirements for out-of-state child-placing agencies.

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

SECTION 1. Health insurance requirements for adoptees. The department of human services, county social service board, or child-placing agency involved in an adoption proceeding may at any time prior to a final decree of adoption, if legal custody of the person to be adopted is not held by the department, a county social service board, a child-placing agency, or equivalent office or agency outside the state, require the petitioner for the adoption of another person to show proof that a health insurance policy is in effect which provides coverage for the person to be adopted. If proof of health insurance coverage is submitted by the petitioner, no further bond of any kind may be required by the department or a county social service board in regard to health coverage of the person to be adopted.

SECTION 2. A new section to chapter 50-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Out-of-state child-placing agency license requirements.

1. Except as otherwise provided in this section, a child-placing agency that does not maintain an office in this state may apply for and receive a license under the same terms and conditions as a resident child-placing agency.
2. A child-placing agency that does not maintain an office in this state must name on its license application at least one resident child-placing agency. Resident child-placing

agencies named on the application must certify their willingness to:

- a. Receive service of process for papers to be served on the out-of-state child-placing agency;
 - b. Assist when requested by the department of human services in the supervision and visitation of children placed in either temporary or permanent homes by the out-of-state child-placing agency; and
 - c. Provide at the request of the department of human services all other facts, information, and reports to be made on behalf of the out-of-state child-placing agency.
3. An out-of-state child-placing agency that complies with the licensing requirements of this chapter may not be required to maintain an office in this state.

Approved March 29, 1985