

## NORTH DAKOTA MARRIAGE LAWS - BACKGROUND MEMORANDUM

Section 2 of Senate Bill No. 2361 (attached as Appendix A) directs the Legislative Council to study the state's marriage laws and methods for strengthening the institution of marriage in the state, including premarital requirements, such as marital education and counseling, waiting periods, and marital blood tests; the availability of marriage counseling and parenting education in the state; and the implementation of predivorce requirements, such as divorce-effects education.

Senate Bill No. 2361, as introduced, would have provided for a reduced marriage license fee for a couple that completes 12 hours of premarital education. As passed, the bill provided for an increase in the amount of the marriage license fee and did not include a premarital education requirement. Section 2 of the bill, which provided for this study, was added in the conference committee.

### INTRODUCTION

In the English common law tradition, from which American legal doctrines and concepts have developed, a marriage was a contract based upon a voluntary private agreement by a man and a woman to become husband and wife. Marriage was viewed as the basis of the family unit and vital to the preservation of morals and civilization. Traditionally, the husband had a duty to provide a safe house, pay for necessities such as food and clothing, and live in the house. The wife's obligations were maintaining a home, living in the home, having sexual relations with her husband, and rearing the couple's children. Today the underlying concept that marriage is a legal contract still remains, but due to changes in society, the legal obligations are not the same.

Marriage is chiefly regulated by the states. The United States Supreme Court has held that states are permitted to reasonably regulate the institution by prescribing who is allowed to marry and how the marriage can be dissolved. Entering into a marriage changes the legal status of both parties and gives both husband and wife new rights and obligations. One power that the states do not have, however, is that of prohibiting marriage in the absence of a valid reason. For example, prohibiting interracial marriage is not allowed for lack of a valid reason because it was deemed to be unconstitutional.

All states limit individuals to one living husband or wife at a time and will not issue marriage licenses to anyone with a living spouse. Once an individual is married, the individual must be legally released from the relationship by either death, divorce, or annulment before the individual may remarry. Other limitations on individuals include age and close relationship.

Limitations that some but not all states prescribe are the requirements of blood tests, good mental capacity, and being of opposite sex.

### UNITED STATES MARITAL PATTERNS

Since the 1950s, the median age at first marriage has increased for both men and women, reaching 27 years for men and 25 years for women in 2003. Of individuals born between 1935 and 1939, 21 percent of men and 51 percent of women were married by age 20. Of individuals born between 1975 and 1979, 8 percent of men and 18 percent of women were married by age 20. As of 2001, 31 percent of men and 25 percent of women had never been married, and 53 percent of men and 59 percent of women had married only once.

As of 2001, first marriages that ended in divorce lasted a median of eight years for men and women overall. First marriages that occurred from 1955 to 1959 lasted longer than those occurring 20 years later. Seventy-six percent of men and 73 percent of women who married in 1955 to 1959 stayed married for at least 20 years; 58 percent of men and 52 percent of women who married in 1975 to 1979 stayed married as long. However, for both men and women, marital longevity appears to have stabilized for marriages entered after 1979. For those marriages between 1985 and 1989, 75 percent of people were still married after 10 years.

### BACKGROUND

#### North Dakota Domestic Relations Law and Caseloads

North Dakota Century Code Title 14 contains the majority of the statutes dealing with domestic relations or family law in the state. Title 14 includes those chapters that deal with marriage, divorce, annulment, separation, custody and visitation, child support, adoption, alternative dispute resolution, and domestic violence. Another area of the code which includes statutes related to the family law process is Chapter 27-20, which contains the Uniform Juvenile Court Act.

In 2004, 36.5 percent (9,729 of 26,591) of the civil case filings in district court involved domestic relations cases. The domestic relations case filings increased 4.3 percent over 2003. In addition, 2,491 juvenile cases were filed, representing about 2 percent of the total district court caseload. Within the domestic relations category, child and spousal support proceedings made up 48.8 percent of the cases; divorce, 24.1 percent; protection and restraining orders, 15.8 percent; paternity, 6.8 percent; adoption, 3.1 percent, and custody filings, 1.2 percent.

Protection and restraining order filings increased 9.5 percent to 1,406. Divorce filings increased 2 percent in 2004 with 2,349 filings compared to 2,301 in 2003. The number of divorce filings was 2,774 in 1999, 3,044 in 1998, and 2,911 in 1997.

Paternity case filings were down 6 percent with 659 cases filed in 2004, while support proceedings increased 5.4 percent with 4,750 cases filed, compared to 4,506 cases in 2003.

### North Dakota Marriage Laws

The state's laws concerning the marriage contract are contained in North Dakota Century Code Chapter 14-03. Section 14-03-01 defines marriage as "a personal relation arising out of a civil contract between one man and one woman to which the consent of the parties is essential. . . . A spouse refers only to a person of the opposite sex who is a husband or a wife." Following are some of the requirements for a valid marriage in North Dakota:

- **Identification requirement** - Section 14-03-17 requires each applicant to provide a birth certificate or other satisfactory evidence of age.
- **Residency requirement** - Individuals are not required to be residents of the state to be married in the state.
- **If previously married** - Section 14-03-17 provides that if a divorce has been granted to either or both of the parties, a certified copy of the decree must be filed with the marriage license application.
- **Under 18 years of age** - Under Section 14-03-02, if an individual is between 16 and 18 years of age, a marriage license may not be issued without the written consent of the parents or guardian. A marriage license may not be issued to any person below the age of 16.
- **Marriage license fees** - Section 14-03-22 provides for a marriage license fee of up to \$65. Of that amount, \$35 is designated to be deposited in the domestic violence prevention fund to provide aid to victims of domestic violence.
- **Waiting period** - North Dakota law does not require a waiting period between the issuance of the license and the marriage.
- **Blood tests** - No blood tests are required in the state. Section 14-03-12, which was repealed in 1983, provided that a serological test for syphilis was required before individuals could apply for a marriage license.
- **Common law marriage** - A common law marriage is not recognized as valid in this state (*Schumacher v. Great Northern Railway*, 23 N.D. 231, 136 N.W. 85 (1912)).
- **Void marriages** - Section 14-03-03 provides that certain marriages are incestuous and

void. These include marriages between parents and children, brothers and sisters, uncles and nieces, aunts and nephews, and between first cousins.

- **Same sex marriage** - Same sex marriage is prohibited under Sections 14-03-01 and 14-03-08 as well as a constitutional amendment passed in November 2004.
- **Officials** - Section 14-03-09 provides that marriages may be solemnized by all judges of courts of record; municipal judges; recorders or other officials designated by the board of county commissioners; ordained ministers of the gospel; priests; clergy licensed by recognized denominations; and by any person authorized by the rituals and practices of any religious persuasion. Under Section 14-03-21, the officiant must return the original copy of the marriage certificate and license to the official who issued the license within five days after the solemnization of the marriage. A duplicate copy must also be given to the individuals married.
- **License valid** - According to Section 14-03-10, a marriage license is valid for 60 days. The license may only be used within the state.

Other North Dakota laws regarding the marriage and divorce process are also contained in North Dakota Century Code Title 14. Chapter 14-03.1 provides for the Uniform Premarital Agreement Act, Chapter 14-05 addresses issues relating to divorce, and Chapter 14-07 addresses issues relating to the rights and liabilities of the husband and wife.

Attached as Appendix B is a summary of the marriage laws of the 50 states, the District of Columbia, and Puerto Rico.

### PREVIOUS STUDIES AND LEGISLATION

During the 1999-2000 interim, the Judiciary Committee studied the family law process in North Dakota with a focus on a review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods. The committee recommended a bill to consolidate the chapters dealing with divorce and separation into one chapter, to reenact the penalty for intentionally removing a child from the state in violation of a child custody order, to apply the best interest standard to the annulment process, and to remove and update archaic language in the domestic relations statutes. The bill was enacted by the Legislative Assembly.

During the 1997-98 interim, the Child Support Committee studied the provision of child support services and child care licensing in this state and the issues of fairness and equity as they relate to child support guidelines and the issuance and enforcement of child custody and visitation orders.

The 1993-94 interim Court Services Committee studied the feasibility and desirability of establishing a family court for the resolution of domestic relations cases for low-income persons.

### **2005 LEGISLATION**

In addition to Senate Bill No. 2361, which provided for an increase in the marriage license fee and for this study, the Legislative Assembly considered House Bill No. 1420 (2005). This bill would have required a six-month waiting period for a divorce during which the parties would be required to attend a seminar on the effect of divorce on children. The topics of the seminar included cooperative parenting and guidelines for visitation. The bill failed to pass the House.

### **SUGGESTED STUDY APPROACH**

The committee, in its study of the state's marriage laws and methods for strengthening the institution of marriage in the state, may wish to approach this study as follows:

- Receive and review information regarding the marriage laws and marriage education requirements enacted in other states.
- Receive information regarding marriage and divorce trends in the state and in the country.
- Receive information regarding premarital and marriage counseling and parenting education and the availability of those services in the state.
- Develop final recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:2