

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 116

### SENATE BILL NO. 2368

(Senators Miller, Campbell, Schaible)  
(Representatives B. Koppelman, Larson, Rohr)

AN ACT to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to limitations on and penalties for performing an abortion; to amend and reenact sections 14-02.1-01, 14-02.1-02, and 14-02.1-07 of the North Dakota Century Code, relating to definitions and reporting requirements.

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

<sup>44</sup> **SECTION 1. AMENDMENT.** Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-02.1-01. Purpose.**

~~The purpose of this chapter is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.~~  
The purpose of this section is to protect the state's compelling interest in the unborn human life from the time the unborn child is capable of feeling pain.

<sup>45</sup> **SECTION 2. AMENDMENT.** Section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-02.1-02. Definitions.**

As used in this chapter:

1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
  - a. Save the life or preserve the health of the unborn child;
  - b. Remove a dead unborn child caused by spontaneous abortion; or

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<sup>44</sup> Section 14-02.1-01 was also amended by section 7 of Senate Bill No. 2004, chapter 35.

<sup>45</sup> Section 14-02.1-02 was also amended by section 1 of House Bill No. 1305, chapter 117.

- c. Treat a woman for an ectopic pregnancy.
2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed or prescribed, other than a hospital.
  3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.
  4. "Drug label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration and agreed upon by the drug company applying for the federal food and drug administration authorization of that drug. Also known as "final printing labeling instructions", drug label is the federal food and drug administration document that delineates how a drug is to be used according to the federal food and drug administration approval.
  5. "Fertilization" means the fusion of a human spermatozoon with a human ovum.
  6. "Hospital" means an institution licensed by the state department of health under chapter 23-16 and any hospital operated by the United States or this state.
  - ~~6-7.~~ "Human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.
  - ~~7-8.~~ "Infant born alive" means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.
  - ~~8-9.~~ "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided that:
    - a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
      - (1) The name of the physician who will perform the abortion;
      - (2) The abortion will terminate the life of a whole, separate, unique, living human being;
      - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
      - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
      - (5) The medical risks associated with carrying her child to term.

- b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
    - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;
    - (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;
    - (3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and
    - (4) That she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.
  - c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her.
  - d. Before the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.
  - e. The physician has not received or obtained payment for a service provided to a patient who has inquired about an abortion or has scheduled an abortion before the twenty-four-hour period required by this section.
- 9-10. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion of her pregnancy without first determining postfertilization age to avert her death or for which the ~~twenty-four hour~~ delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. A condition may not be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that ~~would~~ she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.
- 40-11. "Physician" means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
- 44-12. "Postfertilization age" means the age of the unborn child as calculated from fertilization.
13. "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.
14. "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age

of the unborn child at the time the abortion is planned to be performed or induced.

- 42-15. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- 43-16. "Unborn child" means the offspring of human beings from conception until birth.
- 44-17. "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

**SECTION 3.** A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

**Determination of postfertilization age - Abortion of unborn child of twenty or more weeks postfertilization age prohibited.**

1. Except in the case of a medical emergency, an abortion may not be performed or induced or be attempted to be performed or induced unless the physician performing or inducing the abortion has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making the determination, the physician shall make those inquiries of the woman and perform or cause to be performed the medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.
2. Except in the case of a medical emergency, a person may not perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty or more weeks.

**SECTION 4. AMENDMENT.** Section 14-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-07. Records required - Reporting of practice of abortion.**

1. Records:
  - a. All abortion facilities and hospitals in which abortions are performed shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses' worksheets, social service records, and progress notes, and shall further keep a copy of all written certifications provided for in this chapter as well as a copy of the constructive notice forms, consent forms, court orders, abortion data reports, adverse event reports, abortion compliance reports, and complication reports. All abortion facilities shall keep the following records of the:
    - (1) The number of women who availed themselves of the opportunity to receive and view an ultrasound image of their unborn children pursuant to section 14-02.1-04, and the number who did not; and of

each of those numbers, the number who, to the best of the reporting abortion facility's information and belief, went on to obtain the abortion. ~~Records must be maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.~~

(2) Postfertilization age:

(a) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed.

(b) If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the basis of the determination that a medical emergency existed.

b. The medical records of abortion facilities and hospitals in which abortions are performed and all information contained therein must remain confidential and may be used by the state department of health only for gathering statistical data and ensuring compliance with the provisions of this chapter.

c. Records must be maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.

2. Reporting:

a. An individual abortion compliance report and an individual abortion data report for each abortion performed upon a woman must be completed by her attending physician. The abortion data report must be confidential and may not contain the name of the woman. The abortion data report must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics.

b. All abortion compliance reports must be signed by the attending physician within twenty-four hours and submitted to the state department of health within ten business days from the date of the abortion. All abortion data and complication reports must be signed by the attending physician and submitted to the state department of health within thirty days from the date of the abortion. If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion and the physician knows that the individual experiences during or after the use an adverse event, the physician shall provide a written report of the adverse event within thirty days of the event to the state department of health and the federal food and drug administration via the medwatch reporting system. For purposes of this section, "adverse event" is defined based upon the federal food and drug administration criteria given in the medwatch reporting system. If a determination of probable postfertilization age was not made, the abortion compliance report must state the basis of the determination that a medical emergency existed. If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the abortion compliance report must state the basis of the determination that a medical emergency existed.

c. A copy of the abortion report, any complication report, and any adverse event report must be made a part of the medical record of the patient at

the facility or hospital in which the abortion was performed. In cases when post-abortion complications are discovered, diagnosed, or treated by physicians not associated with the facility or hospital where the abortion was performed, the state department of health shall forward a copy of the report to that facility or hospital to be made a part of the patient's permanent record.

- d. The state department of health is responsible for collecting all abortion compliance reports, abortion data reports, complication reports, and adverse event reports and collating and evaluating all data gathered from these reports and shall annually publish a statistical report based on data from abortions performed in the previous calendar year. All abortion compliance reports received by the state department of health are public records. Except for disclosure to a law enforcement officer or state agency, the department may not disclose an abortion compliance report without first removing any individually identifiable health information and any other demographic information, including race, marital status, number of previous live births, and education regarding the woman upon whom the abortion was performed.
- e. The state department of health shall report to the attorney general any apparent violation of this chapter.

Approved April 16, 2013  
Filed April 16, 2013

## CHAPTER 117

### HOUSE BILL NO. 1305

(Representatives Grande, Brabandt, K. Koppelman, Laning, Rohr, Steiner)  
(Senators Berry, Burckhard, Campbell, Dever, Erbele, Hogue)

AN ACT to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to the prohibition on abortions for sex selection or genetic abnormalities; to amend and reenact section 14-02.1-02 of the North Dakota Century Code, relating to definitions; and to provide a penalty.

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

<sup>46</sup> **SECTION 1. AMENDMENT.** Section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-02.1-02. Definitions.**

As used in this chapter:

1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
  - a. Save the life or preserve the health of the unborn child;
  - b. Remove a dead unborn child caused by spontaneous abortion; or
  - c. Treat a woman for an ectopic pregnancy.
2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed or prescribed, other than a hospital.
3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.
4. "Drug label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration and agreed upon by the drug company applying for the federal food and drug administration authorization of that drug. Also known as "final printing labeling instructions", drug label is the federal food and drug administration document that delineates how a drug is to be used according to the federal food and drug administration approval.

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<sup>46</sup> Section 14-02.1-02 was also amended by section 2 of Senate Bill No. 2368, chapter 116.

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5. "Down syndrome" refers to a chromosome disorder associated with an extra chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome twenty-one.
6. "Genetic abnormality" means any defect, disease, or disorder that is inherited genetically. The term includes any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, or any other type of physical or mental disability, abnormality, or disease.
7. "Hospital" means an institution licensed by the state department of health under chapter 23-16 and any hospital operated by the United States or this state.
- ~~6-8.~~ "Human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.
- ~~7-9.~~ "Infant born alive" means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.
- ~~8-10.~~ "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided that:
- a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
    - (1) The name of the physician who will perform the abortion;
    - (2) The abortion will terminate the life of a whole, separate, unique, living human being;
    - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
    - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
    - (5) The medical risks associated with carrying her child to term.
  - b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
    - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;
    - (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;

- (3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and
- (4) That she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.
- c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her.
- d. Before the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.
- e. The physician has not received or obtained payment for a service provided to a patient who has inquired about an abortion or has scheduled an abortion before the twenty-four-hour period required by this section.
- 9-11. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion to avert her death or for which the twenty-four-hour delay will create serious risk of substantial and irreversible physical impairment of a major bodily function. A condition may not be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.
- 40-12. "Physician" means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
- 44-13. "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.
- 42-14. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- 43-15. "Unborn child" means the offspring of human beings from conception until birth.
- 44-16. "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

**SECTION 2.** A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

**Prohibition - Sex-selective abortion - Abortion for genetic abnormality - Penalty.**

1. Notwithstanding any other provision of law, a physician may not intentionally perform or attempt to perform an abortion with knowledge that the pregnant woman is seeking the abortion solely:

- a. On account of the sex of the unborn child; or
  - b. Because the unborn child has been diagnosed with either a genetic abnormality or a potential for a genetic abnormality.
2. Any physician who performs an abortion in violation of this section is guilty of a class A misdemeanor.

Approved March 26, 2013  
Filed March 26, 2013

## CHAPTER 118

### SENATE BILL NO. 2305

(Senators Berry, Campbell, Lyson)  
(Representatives Grande, K. Koppelman, Weisz)

AN ACT to amend and reenact subsection 1 of section 14-02.1-04 of the North Dakota Century Code, relating to limitations on physicians and abortion facilities.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 14-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~No~~An abortion may ~~not~~ be ~~done~~performed by any person other than a physician who is using applicable medical standards and who is licensed to practice in this state. All physicians performing abortion procedures must have admitting privileges at a hospital located within thirty miles [42.28 kilometers] of the abortion facility and staff privileges to replace hospital on-staff physicians at that hospital. These privileges must include the abortion procedures the physician will be performing at abortion facilities. An abortion facility must have a staff member trained in cardiopulmonary resuscitation present at all times when the abortion facility is open and abortions are scheduled to be performed.

Approved March 26, 2013

Filed March 26, 2013

## CHAPTER 119

### HOUSE BILL NO. 1456

(Representatives Grande, Brabandt, Heller, Hunskor, Rohr, Toman)  
(Senators Berry, Burckhard, Kilzer, Laffen, Luick, Unruh)

AN ACT to create and enact two new sections to chapter 14-02.1 and a new subsection to section 43-17-31 of the North Dakota Century Code, relating to limitations on abortion after determination of detectable heartbeat in an unborn child and to grounds for disciplinary action for physicians; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

##### **Determination of detectable heartbeat in unborn child before abortion - Exception.**

1. Except when a medical emergency exists that prevents compliance with this subsection, an individual may not perform an abortion on a pregnant woman before determining, in accordance with standard medical practice, if the unborn child the pregnant woman is carrying has a detectable heartbeat. Any individual who performs an abortion on a pregnant woman based on the exception in this subsection shall note in the pregnant woman's medical records that a medical emergency necessitating the abortion existed.
2. If a physician performs an abortion on a pregnant woman before determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, that physician is subject to disciplinary action under section 43-17-31.

**SECTION 2.** A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

##### **Abortion after detectable heartbeat in unborn child prohibited - Exception - Penalty.**

1. Notwithstanding any other provision of law, an individual may not knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn child the pregnant woman is carrying and whose heartbeat has been detected according to the requirements of section 1 of this Act.
2.
  - a. An individual is not in violation of subsection 1 if that individual performs a medical procedure designed to or intended, in that individual's reasonable medical judgment, to prevent the death of a pregnant woman, to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, or to save the life of an unborn child.
  - b. Any individual who performs a medical procedure as described in subsection 1 shall declare in writing, under penalty of perjury, that the

medical procedure is necessary, to the best of that individual's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. That individual also shall provide in that written document, under penalty of perjury, the medical condition of that pregnant woman that the medical procedure performed as described in subdivision a assertedly will address, and the medical rationale for the conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

- c. The individual who performs a medical procedure as described in subdivision a shall place the written documentation required under subdivision b in the pregnant woman's medical records and shall maintain a copy of the written documentation in the individual's own records for at least seven years.
3. An individual is not in violation of subsection 1 if that individual has performed an examination for the presence of a heartbeat in the unborn child utilizing standard medical practice and that examination does not reveal a heartbeat in the unborn child or the individual has been informed by a physician who has performed the examination for the unborn child's heartbeat that the examination did not reveal a heartbeat in the unborn child.
4. It is a class C felony for an individual to willingly perform an abortion in violation of subsection 1. The pregnant woman upon whom the abortion is performed in violation of subsection 1 may not be prosecuted for a violation of subsection 1 or for conspiracy to violate subsection 1.
5. This section does not prohibit the sale, use, prescription, or administration of a measure, drug, or chemical designed for contraceptive purposes.

**SECTION 3.** A new subsection to section 43-17-31 of the North Dakota Century Code is created and enacted as follows:

The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 1 of this Act.

Approved March 26, 2013

Filed March 26, 2013

## CHAPTER 120

### SENATE BILL NO. 2225

(Senators Robinson, Armstrong, Wardner)  
(Representatives D. Johnson, J. Kelsh)

AN ACT to amend and reenact section 14-03-09 of the North Dakota Century Code, relating to the authority to solemnize marriages.

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

**SECTION 1. AMENDMENT.** Section 14-03-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-03-09. Who may solemnize marriages.**

Marriages may be solemnized at any location within the state by ~~all~~:

1. All judges of courts of record; ~~municipal~~
2. Municipal judges; ~~recorders~~
3. Recorders, unless the board of county commissioners designates a different official; ~~ordained~~
4. Ordained ministers of the gospel; ~~priests, and clergy licensed, authorized by recognized denominations pursuant to chapter 10-33; and by~~
5. By any person individual authorized by the rituals and practices of any religious persuasion.

Approved April 26, 2013

Filed April 26, 2013

## CHAPTER 121

### HOUSE BILL NO. 1128

(Judiciary Committee)

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

AN ACT to create and enact chapter 14-03.2 of the North Dakota Century Code, relating to the Uniform Premarital and Marital Agreements Act and the abrogation of common law regarding premarital and marital agreements; to repeal chapter 14-03.1 and section 30.1-05-07 of the North Dakota Century Code, relating to the Uniform Premarital Agreement Act and the waiver of right to elect of a surviving spouse; and to provide for a legislative management study.

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

<sup>47</sup> **SECTION 1.** Chapter 14-03.2 of the North Dakota Century Code is created and enacted as follows:

##### **14-03.2-01. Definitions.**

In this chapter:

1. "Amendment" means a modification or revocation of a premarital agreement or marital agreement.
2. "Marital agreement" means an agreement between spouses who intend to remain married which affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed after the spouses marry, of a premarital agreement or marital agreement.
3. "Marital dissolution" means the ending of a marriage by court decree. The term includes a divorce, dissolution, and annulment.
4. "Marital right or obligation" means any of the following rights or obligations arising between spouses because of their marital status:
  - a. Spousal support;
  - b. A right to property, including characterization, management, and ownership;
  - c. Responsibility for a liability;
  - d. A right to property and responsibility for liabilities at separation, marital dissolution, or death of a spouse; or
  - e. Award and allocation of attorney's fees and costs.

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<sup>47</sup> Section 14-03.2-05 was amended by section 19 of House Bill No. 1015, chapter 15.

5. "Premarital agreement" means an agreement between individuals who intend to marry which affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed before the individuals marry, of a premarital agreement.
6. "Property" means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein.
7. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
8. "Sign" means with present intent to authenticate or adopt a record:
  - a. To execute or adopt a tangible symbol; or
  - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
9. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

#### **14-03.2-02. Scope.**

1. This chapter applies to a premarital agreement or marital agreement signed after July 31, 2013.
2. This chapter does not affect any right, obligation, or liability arising under a premarital agreement or marital agreement signed before August 1, 2013.
3. This chapter does not apply to:
  - a. An agreement between spouses which affirms, modifies, or waives a marital right or obligation and requires court approval to become effective; or
  - b. An agreement between spouses who intend to obtain a marital dissolution or court-decreed separation which resolves their marital rights or obligations and is signed when a proceeding for marital dissolution or court-decreed separation is commenced.
4. This chapter does not affect adversely the rights of a bona fide purchaser for value to the extent that this chapter applies to a waiver of a marital right or obligation in a transfer or conveyance of property by a spouse to a third party.

#### **14-03.2-03. Governing law.**

The validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement are determined:

1. By the law of the jurisdiction designated in the agreement if the jurisdiction has a significant relationship to the agreement or either party and the designated law is not contrary to a fundamental public policy of this state; or

2. Absent an effective designation described in subsection 1, by the law of this state, including the choice-of-law rules of this state.

#### **14-03.2-04. Principles of law and equity.**

Principles of law and equity may not:

1. Supplement an agreement executed in accordance with this chapter; or
2. Be used to alter a material term in an agreement executed in accordance with this chapter.

#### **14-03.2-05. Formation requirements.**

A premarital agreement or marital agreement must be in a record and signed by both parties. The agreement is enforceable without consideration. A marital agreement created pursuant to this chapter must be signed within the first one hundred twenty days of the marriage.

#### **14-03.2-06. When agreement effective.**

A premarital agreement is effective on marriage. A marital agreement is effective on signing by both parties.

#### **14-03.2-07. Void marriage.**

If a marriage is determined to be void, a premarital agreement or marital agreement is enforceable to the extent necessary to avoid an inequitable result.

#### **14-03.2-08. Enforcement.**

1. A premarital agreement or marital agreement is unenforceable if a party against whom enforcement is sought proves:
  - a. The party's consent to the agreement was involuntary or the result of duress;
  - b. The party did not have access to independent legal representation under subsection 2;
  - c. Unless the party had independent legal representation at the time the agreement was signed, the agreement did not include a notice of waiver of rights under subsection 3 or an explanation in plain language of the marital rights or obligations being modified or waived by the agreement; or
  - d. Before signing the agreement, the party did not receive adequate financial disclosure under subsection 4.
2. A party has access to independent legal representation if:
  - a. Before signing a premarital or marital agreement, the party has a reasonable time to:
    - (1) Decide whether to retain a lawyer to provide independent legal representation; and

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- (2) Locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and
- b. The other party is represented by a lawyer and the party has the financial ability to retain a lawyer or the other party agrees to pay the reasonable fees and expenses of independent legal representation.
3. A notice of waiver of rights under this section requires language, conspicuously displayed, substantially similar to the following, as applicable to the premarital agreement or marital agreement:
- "If you sign this agreement, you may be:
- Giving up your right to be supported by the person you are marrying or to whom you are married.
- Giving up your right to ownership or control of money and property.
- Agreeing to pay bills and debts of the person you are marrying or to whom you are married.
- Giving up your right to money and property if your marriage ends or the person to whom you are married dies.
- Giving up your right to have your legal fees paid."
4. A party has adequate financial disclosure under this section if the party:
- a. Receives a reasonably accurate description and good-faith estimate of value of the property, liabilities, and income of the other party;
- b. Expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or
- c. Has adequate knowledge or a reasonable basis for having adequate knowledge of the information described in subdivision a.
5. If a premarital agreement or marital agreement modifies or eliminates spousal support and the modification or elimination causes a 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, on request of that party, may require the other party to provide support to the extent necessary to avoid that eligibility.
6. A court may refuse to enforce a term of a premarital agreement or marital agreement if, in the context of the agreement taken as a whole:
- a. The term was unconscionable at the time of signing; or
- b. Enforcement of the term would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed.
7. The court shall decide a question of unconscionability or substantial hardship under subsection 6 as a matter of law.

**14-03.2-09. Unenforceable terms.**

1. In this section, "parental rights and responsibilities" means all the rights and responsibilities a parent has concerning the parent's child.
2. A term in a premarital agreement or marital agreement is not enforceable to the extent that it:
  - a. Adversely affects a child's right to support;
  - b. Limits or restricts a remedy available to a victim of domestic violence under law of this state other than this chapter;
  - c. Purports to modify the grounds for a court-decreed separation or marital dissolution available under law of this state other than this chapter; or
  - d. Penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.
3. A term in a premarital agreement or marital agreement which defines the rights or duties of the parties regarding parental rights and responsibilities is not binding on the court.

**14-03.2-10. Limitation of action.**

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement or marital agreement is tolled during the marriage of the parties to the agreement, but equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

**14-03.2-11. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**SECTION 2. REPEAL.** Chapter 14-03.1 and section 30.1-05-07 of the North Dakota Century Code are repealed.

**SECTION 3. MARRIAGE AND MARITAL AGREEMENTS - LEGISLATIVE MANAGEMENT STUDY.** During the 2013-14 interim, the legislative management shall consider studying marriage, including the positive influence of marriage on society, children, and government spending, and the use of and the need for marital agreements in the state. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fourth legislative assembly.

Approved May 2, 2013  
Filed May 2, 2013

## CHAPTER 122

### SENATE BILL NO. 2175

(Senators Wardner, Lyson)  
(Representatives K. Koppelman, Larson, Delmore)

AN ACT to amend and reenact section 14-07-08 of the North Dakota Century Code, relating to the liabilities of husband and wife.

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

**SECTION 1. AMENDMENT.** Section 14-07-08 of the North Dakota Century Code is amended and reenacted 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~~Except for necessary expenses as provided in subsection 3, the earnings of one spouse are not liable for the debts of the other spouse, and the earnings and accumulations of either spouse and of any minor children living with either spouse or in one spouse's custody, while the husband and wife are living separate from each other, are the separate property of 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, medical care, 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 other spouse but each is liable for their own debts contracted before or after marriage.

Approved April 24, 2013  
Filed April 24, 2013

## CHAPTER 123

### SENATE BILL NO. 2122

(Judiciary Committee)

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

AN ACT to create and enact chapter 14-09.3 of the North Dakota Century Code, relating to the Uniform Deployed Parents Custody and Visitation Act; to amend and reenact sections 14-09-06.2 and 14-09-06.6 of the North Dakota Century Code, relating to best interests and welfare of the child factors and limitation on postjudgment modifications; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

1. For the purpose of parental rights and responsibilities, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
  - a. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.
  - b. The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
  - c. The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.
  - d. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community.
  - e. The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.
  - f. The moral fitness of the parents, as that fitness impacts the child.
  - g. The mental and physical health of the parents, as that health impacts the child.
  - h. The home, school, and community records of the child and the potential effect of any change.

- i. If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.
  - j. Evidence of domestic violence. In determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent have residential responsibility. The court shall cite specific findings of fact to show that the residential responsibility best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards residential responsibility to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent residential responsibility. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
  - k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.
  - l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.
  - m. Any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute.
2. In a proceeding for parental rights and responsibilities of a child of a servicemember, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interests of the child but may consider any significant impact on the best interests of the child of the parent's past or possible future deployment.
  3. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of

the marriage as from the circumstances of the parties and the nature of the case is equitable.

**SECTION 2. AMENDMENT.** Section 14-09-06.6 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.6. Limitations on postjudgment modifications of primary residential responsibility.**

1. Unless agreed to in writing by the parties, or if included in the parenting plan, no motion for an order to modify primary residential responsibility may be made earlier than two years after the date of entry of an order establishing primary residential responsibility, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, or if included in the parenting plan, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 5.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
  - a. The persistent and willful denial or interference with parenting time;
  - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
  - c. The primary residential responsibility for the child has changed to the other parent for longer than six months.
4. A party seeking modification of an order concerning primary residential responsibility shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. The court shall set a date for an evidentiary hearing only if a prima facie case is established.
5. The court may not modify the primary residential responsibility within the two-year period following the date of entry of an order establishing primary residential responsibility unless the court finds the modification is necessary to serve the best ~~interest~~interests of the child and:
  - a. The persistent and willful denial or interference with parenting time;
  - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
  - c. The residential responsibility for the child has changed to the other parent for longer than six months.
6. The court may modify the primary residential responsibility after the two-year period following the date of entry of an order establishing primary residential responsibility if the court finds:

- a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
  - b. The modification is necessary to serve the best ~~interest~~interests of the child.
7. The court may modify a prior order concerning primary residential responsibility at any time if the court finds a stipulated agreement by the parties to modify the order is in the best ~~interest~~interests of the child.
  8. Upon a motion to modify primary residential responsibility under this section, the burden of proof is on the moving party.
  9. ~~If a motion for change of primary parental responsibility is filed during the time a parent is in active duty service, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, which changes the child's placement that existed on the date the parent was called to active duty service, except the court may enter a temporary order concerning residential responsibility which is in the best interest of the child. The temporary order must explicitly provide that residential responsibility must be restored to the service member upon the service member's release from active duty service, unless the court finds by clear and convincing evidence that restoration of residential responsibility would not be in the best interest of the child. If an original decision concerning primary residential responsibility is pending and the service member is alerted for active duty service, or is absent for active duty service, the court may not issue a permanent order until the return of the service member from active duty. The court may issue a temporary order concerning primary residential responsibility in the best interest of the child for the time period of the active duty service. This section does not prevent a service member from consenting to a modification that continues past discharge or release from active duty service or to agreeing to a permanent order before release from active duty service. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and "active duty service" means an order to active duty under United States Code title 10.~~

**SECTION 3.** Chapter 14-09.3 of the North Dakota Century Code is created and enacted as follows:

**14-09.3-01. (102) Definitions.**

1. "Adult" means an individual who has attained eighteen years of age or an emancipated minor.
2. "Caretaking authority" means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.
3. "Child" means:
  - a. An unemancipated individual who has not attained eighteen years of age;  
or

- b. An adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility.
- 4. "Court" means a tribunal authorized under law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility.
- 5. "Custodial responsibility" includes all powers and duties relating to caretaking authority and decisionmaking authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.
- 6. "Decisionmaking authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.
- 7. "Deploying parent" means a servicemember, who is deployed or has been notified of impending deployment and is:
  - a. A parent of a child under law of this state other than this chapter; or
  - b. An individual who has custodial responsibility for a child under law of this state other than this chapter.
- 8. "Deployment" means the movement or mobilization of a servicemember for more than ninety days but less than eighteen months pursuant to uniformed service orders that:
  - a. Are designated as unaccompanied;
  - b. Do not authorize dependent travel; or
  - c. Otherwise do not permit the movement of family members to the location to which the servicemember is deployed.
- 9. "Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this chapter.
- 10. "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.
- 11. "Nonparent" means an individual other than a deploying parent or other parent.
- 12. "Other parent" means an individual who, in common with a deploying parent, is:
  - a. A parent of a child under law of this state other than this chapter; or

- 
- b. An individual who has custodial responsibility for a child under law of this state other than this chapter.
13. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
  14. "Return from deployment" means the conclusion of a servicemember's deployment as specified in uniformed service orders.
  15. "Servicemember" means a member of a uniformed service.
  16. "Sign" means, with present intent to authenticate or adopt a record:
    - a. To execute or adopt a tangible symbol; or
    - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
  17. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
  18. "Uniformed service" means:
    - a. Active and reserve components of the army, navy, air force, marine corps, or coast guard of the United States;
    - b. The United States merchant marine;
    - c. The commissioned corps of the United States public health service;
    - d. The commissioned corps of the national oceanic and atmospheric administration of the United States; or
    - e. The national guard of a state.

#### **14-09.3-02. (103) Remedies for noncompliance.**

In addition to other remedies under law of this state other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.

#### **14-09.3-03. (104) Jurisdiction.**

1. A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction under chapter 14-14.1.
2. If a court has issued a temporary order regarding custodial responsibility pursuant to sections 14-09.3-11 through 14-09.3-21, the residence of the deploying parent is not changed by reason of the deployment for the purposes of chapter 14-14.1 during the deployment.
3. If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by

agreement pursuant to sections 14-09.3-07 through 14-09.3-10, the residence of the deploying parent is not changed by reason of the deployment for the purposes of chapter 14-14.1.

4. If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of chapter 14-14.1.
5. This section does not prevent a court from exercising temporary emergency jurisdiction under chapter 14-14.1.

**14-09.3-04. (105) Notification required of deploying or redeploying parent.**

1. Except as otherwise provided in subsection 4 and subject to subsection 3, a deploying parent shall notify in a record the other parent of a pending deployment or redeployment not later than seven days after receiving notice of deployment or redeployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven days, the deploying or redeploying parent shall give the notification as soon as reasonably possible.
2. Except as otherwise provided in subsection 4 and subject to subsection 3, each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection 1.
3. If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection 1, or notification of a plan for custodial responsibility during deployment under subsection 2, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.
4. Notification in a record under subsection 1 or 2 is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.
5. In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

**14-09.3-05. (106) Duty to notify of change of address.**

1. Except as otherwise provided in subsection 2, an individual to whom custodial responsibility has been granted during deployment pursuant to sections 14-09.3-07 through 14-09.3-10 or sections 14-09.3-11 through 14-09.3-21 shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.

2. If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection 1 may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

**14-09.3-06. (201) Form of agreement.**

1. The parents of a child may enter into a temporary agreement under sections 14-09.3-07 through 14-09.3-10 granting custodial responsibility during deployment.
2. An agreement under subsection 1 must be:
  - a. In writing; and
  - b. Signed by both parents and any nonparent to whom custodial responsibility is granted.
3. Subject to subsection 4, an agreement under subsection 1, if feasible, must:
  - a. Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;
  - b. Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;
  - c. Specify any decisionmaking authority that accompanies a grant of caretaking authority;
  - d. Specify any grant of limited contact to a nonparent;
  - e. If under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;
  - f. Specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;
  - g. Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;
  - h. Acknowledge that any party's child support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;
  - i. Provide that the agreement will terminate according to the procedures under sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns from deployment; and
  - j. If the agreement must be filed pursuant to section 14-09.3-10, specify which parent is required to file the agreement.

4. The omission of any of the items specified in subsection 3 does not invalidate an agreement under this section.

#### **14-09.3-07. (202) Nature of authority created by agreement.**

1. An agreement under sections 14-09.3-07 through 14-09.3-10 is temporary and terminates pursuant to sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section 14-09.3-08. The agreement does not create an independent, continuing right to caretaking authority, decisionmaking authority, or limited contact in an individual to whom custodial responsibility is given.
2. A nonparent who has caretaking authority, decisionmaking authority, or limited contact by an agreement under sections 14-09.3-07 through 14-09.3-10 has standing to enforce the agreement until it has been terminated by court order, by modification under section 14-09.3-08, or under sections 14-09.3-22 through 14-09.3-25.

#### **14-09.3-08. (203) Modification of agreement.**

1. By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to sections 14-09.3-07 through 14-09.3-10.
2. If an agreement is modified under subsection 1 before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.
3. If an agreement is modified under subsection 1 during deployment of a deploying parent, the modification must be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

#### **14-09.3-09. (204) Power of attorney.**

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this chapter, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

#### **14-09.3-10. (205) Filing agreement or power of attorney with court.**

An agreement or power of attorney under sections 14-09.3-07 through 14-09.3-10 must be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support must be provided to the court with the agreement or power.

**14-09.3-11. (301) Definition.**

In sections 14-09.3-11 through 14-09.3-21, "close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.

**14-09.3-12. (302) Proceeding for temporary custody order.**

1. After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the federal Servicemembers Civil Relief Act [50 U.S.C. appendix sections 521 and 522]. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.
2. At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section 14-09.3-03 or, if there is no pending proceeding in a court with jurisdiction under section 14-09.3-03, in a new action for granting custodial responsibility during deployment.

**14-09.3-13. (303) Expedited hearing.**

If a motion to grant custodial responsibility is filed under subsection 2 of section 14-09.3-12 before a deploying parent deploys, the court shall conduct an expedited hearing.

**14-09.3-14. (304) Testimony by electronic means.**

In a proceeding under sections 14-09.3-11 through 14-09.3-21, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

**14-09.3-15. (305) Effect of prior judicial order or agreement.**

In a proceeding for a grant of custodial responsibility pursuant to sections 14-09.3-11 through 14-09.3-21, the following rules apply:

1. A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of law of this state other than this chapter for modifying a judicial order regarding custodial responsibility.
2. The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under sections 14-09.3-07 through 14-09.3-10, unless the court finds that the agreement is contrary to the best interests of the child.

**14-09.3-16. (306) Grant of caretaking or decisionmaking authority to nonparent.**

1. On motion of a deploying parent and in accordance with the laws of this state other than this chapter, if it is in the best interests of the child, a court may

grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.

2. Unless a grant of caretaking authority to a nonparent under subsection 1 is agreed to by the other parent, the grant is limited to an amount of time not greater than:
  - a. The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or
  - b. In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.
3. A court may grant part of a deploying parent's decisionmaking authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decisionmaking powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.

#### **14-09.3-17. (307) Grant of limited contact.**

On motion of a deploying parent, and in accordance with the laws of this state other than this chapter, unless the court finds that the contact would be contrary to the best interests of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

#### **14-09.3-18. (308) Nature of authority created by temporary custody order.**

1. A grant of authority under sections 14-09.3-11 through 14-09.3-21 is temporary and terminates under sections 14-09.3-22 through 14-09.3-25 after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decisionmaking authority, or limited contact in an individual to whom it is granted.
2. A nonparent granted caretaking authority, decisionmaking authority, or limited contact under sections 14-09.3-11 through 14-09.3-21 has standing to enforce the grant until it is terminated by court order or under sections 14-09.3-22 through 14-09.3-25.

#### **14-09.3-19. (309) Content of temporary custody order.**

1. An order granting custodial responsibility under sections 14-09.3-11 through 14-09.3-21 must:
  - a. Designate the order as temporary; and
  - b. Identify to the extent feasible, the destination, duration, and conditions of the deployment.

2. If applicable, an order for custodial responsibility under sections 14-09.3-11 through 14-09.3-21 must:
  - a. Specify the allocation of caretaking authority, decisionmaking authority, or limited contact among the deploying parent, the other parent, and any nonparent;
  - b. If the order divides caretaking or decisionmaking authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;
  - c. Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interests of the child, and allocate any costs of communications;
  - d. Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interests of the child;
  - e. Provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and
  - f. Provide that the order will terminate pursuant to sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns from deployment.

**14-09.3-20. (310) Order for child support.**

If a court has issued an order granting caretaking authority under sections 14-09.3-11 through 14-09.3-21, or an agreement granting caretaking authority has been executed under sections 14-09.3-07 through 14-09.3-10, the court may enter a temporary order for child support consistent with the laws of this state other than this chapter if the court has jurisdiction under chapter 14-12.2.

**14-09.3-21. (311) Modifying or terminating grant of custodial responsibility to nonparent.**

1. Except for an order under section 14-09.3-15, except as otherwise provided in subsection 2, and consistent with the federal Servicemembers Civil Relief Act, [50 U.S.C. appendix sections 521 and 522], on motion of a deploying or other parent or any nonparent to whom caretaking authority, decisionmaking authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with sections 14-09.3-11 through 14-09.3-21 and it is in the best interests of the child. A modification is temporary and terminates pursuant to sections 14-09.3-22 through 14-09.3-25 after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.
2. On motion of a deploying parent, the court shall terminate a grant of limited contact.

**14-09.3-22. (401) Procedure for terminating temporary grant of custodial responsibility established by agreement.**

1. At any time after return from deployment, a temporary agreement granting custodial responsibility under sections 14-09.3-07 through 14-09.3-10 may be terminated by an agreement to terminate signed by the deploying parent and the other parent.
2. A temporary agreement under sections 14-09.3-07 through 14-09.3-10 granting custodial responsibility terminates:
  - a. If an agreement to terminate under subsection 1 specifies a date for termination, on that date; or
  - b. If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.
3. In the absence of an agreement under subsection 1 to terminate, a temporary agreement granting custodial responsibility terminates under sections 14-09.3-07 through 14-09.3-10 sixty days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.
4. If a temporary agreement granting custodial responsibility was filed with a court pursuant to section 14-09.3-10, an agreement to terminate the temporary agreement also must be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support must be provided to the court with the agreement to terminate.

**14-09.3-23. (402) Consent procedure for terminating temporary grant of custodial responsibility established by court order.**

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under sections 14-09.3-11 through 14-09.3-21. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

**14-09.3-24. (403) Visitation before termination of temporary grant of custodial responsibility.**

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under sections 14-09.3-07 through 14-09.3-10 or sections 14-09.3-11 through 14-09.3-21 is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interests of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

**14-09.3-25. (404) Termination by operation of law of temporary grant of custodial responsibility established by court order.**

1. If an agreement between the parties to terminate a temporary order for custodial responsibility under sections 14-09.3-11 through 14-09.3-21 has not been filed, the order terminates sixty days after the deploying parent gives

notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

2. A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this chapter.

**14-09.3-26. (502) Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**SECTION 4. APPLICATION.** Chapter 14-09.3 does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before August 1, 2013.

Approved March 21, 2013

Filed March 21, 2013

## CHAPTER 124

### SENATE BILL NO. 2107

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 14-09-08.10, 14-09-09.26, and 14-09-09.33, subsection 1 of section 14-09-09.34, sections 14-20-18 and 34-15-01, subsection 1 of section 34-15-03, and section 34-15-04 of the North Dakota Century Code, relating to child support and paternity; to repeal section 14-09-08.15 of the North Dakota Century Code, relating to medical support; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 14-09-08.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.10. (Contingent effective date - See note) Order.**

Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for health insurance coverage for that child.

1. Except as provided in subsection 2, the order must require the obligor to provide satisfactory health insurance coverage whenever that coverage is available at reasonable cost or becomes available at reasonable cost.
2. If the obligee is an individual with physical custody of the child, the obligee must be required to provide satisfactory health insurance whenever that coverage is available at no or nominal cost.

**(Contingent effective date - See note) Order.** Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for the child's health insurance coverage or other medical support. Responsibility for the child's health insurance coverage or other medical support must be established according to rules adopted by the child support agency. To the extent permitted by federal law and rules promulgated by the secretary of the United States department of health and human services, the rules adopted under this section must ~~be based on~~ include a reasonable cost standard which considers the income of the obligated parent and ~~include a limitation on the obligation of a low-income parent to provide medical support unless the cost of health insurance coverage is available to the parent at no or nominal cost.~~ The order must ~~require the obligated party to provide satisfactory health insurance coverage whenever that coverage is accessible to the child, as defined by the child support agency, and available at reasonable cost or becomes accessible and available at reasonable cost. To assist a court in identifying appropriate health insurance coverage under this section, the child support agency may publish a list of child only health insurance policies for children who are not eligible for public health coverage under chapter 50-20. To the extent permitted by federal law and rules promulgated by the secretary of the United States department of health and human services, the rules~~

~~adopted by the child support agency under this section may not impair a child's ability to apply for and receive public health coverage under chapter 50-29.~~

**SECTION 2. AMENDMENT.** Section 14-09-09.26 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.26. State is real party in interest.**

The state is a real party in interest for purposes of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify, or enforce an order for support of a child in any of the following circumstances:

1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
2. Whenever application is made and accepted ~~under section 14-09-08.9 or 14-09-08.13~~ for services provided by the child support agency.
3. Whenever duties are imposed on the state or its public officials under chapter 14-12.2.

**SECTION 3. AMENDMENT.** Section 14-09-09.33 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.33. Offsets of child support.**

1. Notwithstanding section 14-09-09.31, a court may order that a specific amount of ~~past due~~ child support owed by an obligor to an obligee be offset by an equal amount of ~~past due~~ child support or other debts owed to the obligor by the obligee. An order for an offset is permitted under this subsection ~~only if:~~
  - a. ~~The~~ as long as the proposed offset is limited to ~~past due child support~~ and does not apply to child support owed in the current month or owed in any future month;
  - b. ~~The~~ except as authorized in subsection 4. and the proposed offset does not include any ~~past due~~ child support that has been assigned;
  - c. ~~Neither party whose past due child support obligation will be reduced or eliminated by the proposed offset owes past due child support to another obligee; and~~
  - d. ~~The opportunity to offset past due child support under this section has not been used by either party as an incentive to avoid paying child support in the month in which it is due.~~
2. The order must include a specific finding that the proposed offset serves the best interests of the children to whom the obligor and obligee owe a duty of support.
- ~~3.2.~~ The child support agency may issue an order offsetting ~~past due~~ offset child support if neither party objects after being notified of the proposed offset.

- ~~4.3. Past due child~~ **Child** support owed by an obligor to an obligee may not be offset by ~~past due child support owed to the obligor by the obligee~~ except as permitted in this section.
- ~~5.4. Notwithstanding anything to the contrary in section 14-09-09.24 or 14-09-09.30, an obligor's child support obligation for the current month or for a future month may not be offset by past due child support or other debts owed to the obligor by an obligee unless the court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation, or as authorized by the child support agency under subsection 2, or as permitted in the child support guidelines established under section 14-09-09.7.~~
- ~~6.5. An offset of child support under this section is considered a payment of child support by both the obligor and the obligee. A copy of the order for an offset must be provided to the state disbursement unit.~~
- ~~7. As used in this section, "child support" does not include spousal support.~~

**SECTION 4. AMENDMENT.** Subsection 1 of section 14-09-09.34 of the North Dakota Century Code is amended and reenacted as follows:

1. An income payer who has been served with an income withholding order issued under section 14-09-09.15 for an obligor which includes an amount for past-due support shall notify the child support agency before making any lump sum payment of one thousand dollars or more to the obligor and may report a lump sum payment of an amount less than one thousand dollars or of an amount yet to be determined. "Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services, severance pay, or advances, and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.

**SECTION 5. AMENDMENT.** Section 14-20-18 of the North Dakota Century Code is amended and reenacted as follows:

**14-20-18. (308) Challenge after expiration of period for rescission.**

1. After the period for rescission under section 14-20-17 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:
  - a. On the basis of fraud, duress, or material mistake of fact; and
  - b. Within ~~one year~~ two years after the acknowledgment or denial is filed with the state department of health.
2. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

**SECTION 6. AMENDMENT.** Section 34-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**34-15-01. Definitions.**

As used in this chapter:

1. "Date of hire" means the date services for remuneration were first performed by the employee.
2. "Department" means the department of human services.
- 2-3. "Employee" means an individual who would be determined to be an employee under chapter 24 of the Internal Revenue Code of 1986, as amended [2 U.S.C. 3401 et seq.], but does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting under this chapter, with respect to that employee, could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
4. "Employee newly hired" means an employee who has not previously been employed by the employer or was previously employed by that employer but has been separated from such prior employment for at least sixty consecutive days.
- 3-5. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization.
- 4-6. "Labor organization" means an organization treated as a labor organization under section 2(5) of the National Labor Relations Act, as amended [29 U.S.C. 152(5)], and includes any entity, including a "hiring hall", which is used by the organization and an employer to carry out requirements, described in section 8(f)(3) of the National Labor Relations Act, as amended [29 U.S.C. 158(f)(3)], of an agreement between the organization and the employer.

**SECTION 7. AMENDMENT.** Subsection 1 of section 34-15-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsections 2 and 3, each employer shall furnish to the directory of new hires a report that contains the name, address, and social security number of each employee newly hired for work within this state, the date of hire, whether the employer offers health insurance to the employee, and the employer's name and address and the identifying number assigned under section 6109 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 6109], to the employer.

**SECTION 8. AMENDMENT.** Section 34-15-04 of the North Dakota Century Code is amended and reenacted as follows:

**34-15-04. Reporting format.**

1. Each employer report required by this chapter must be made, to the extent practicable, on a W-4 form or an equivalent form prescribed by the state directory of new hires.
2. Except as provided in subsection 3, the report may be transmitted by first-class mail or by any magnetic or electronic means readable by the

department, including facsimile transmission, electronic mail, modem transmission, or other means of electronic communication.

3. An employer that employs more than twenty-four employees at any time must report new hires through an ~~internet-based~~electronic method provided by the department. An employer that does not comply with this subsection is deemed to have failed to report new hires under section 34-15-05. The department may waive, upon a showing of good cause, the requirement to report new hires electronically.

**SECTION 9. REPEAL.** Section 14-09-08.15 of the North Dakota Century Code is repealed.

**SECTION 10. EFFECTIVE DATE.** Sections 1 and 9 of this Act become effective on the date the department of human services certifies to the legislative council as the effective date of rules adopted to implement this Act. Sections 6, 7, and 8 of this Act become effective on October 1, 2013.

Approved April 2, 2013  
Filed April 2, 2013

## CHAPTER 125

### SENATE BILL NO. 2125

(Senators Axness, Lyson, Mathern)  
(Representatives Maragos, Gruchalla, Hogan)

AN ACT to create and enact two new sections to chapter 14-09 of the North Dakota Century Code, relating to the duty to report a missing child or the death of a child; and to provide a penalty.

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

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

##### **Missing child - Duty to report - Penalty.**

1. For purposes of this section and section 2 of this Act, "caretaker" means the individual who is responsible for the physical control of a child and who is the child's biological or adoptive parent, the spouse of the child's biological or adoptive parent, or an individual acting in the stead of a child's parent at the request of the parent or another with authority to make the request. "Caretaker" does not include an individual who is charged with the enforcement of compulsory attendance provisions under section 15.1-20-03.
2. A caretaker who is responsible at that time for the care of a child under the age of thirteen years and who is unable to make contact with or otherwise verify the whereabouts and safety of that child for a period of twenty-four hours after the caretaker knows or reasonably should have known the child is missing is guilty of a class C felony if the caretaker willfully fails to report the child as missing to law enforcement within a reasonable time after this twenty-four-hour period expires.
3. A caretaker who is responsible at that time for the care of a child at least thirteen years of age but under the age of seventeen years and who is unable to make contact with or otherwise verify the whereabouts and safety of that child for a period of forty-eight hours after the caretaker knows or reasonably should have known the child is missing is guilty of a class B misdemeanor if the caretaker willfully fails to report the child as missing to law enforcement within a reasonable time after the forty-eight-hour period expires.

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

##### **Death of a child - Duty to report - Penalty.**

1. A caretaker of a child in the caretaker's care is guilty of a class C felony if the caretaker willfully fails to:
  - a. Report the child's death to a law enforcement agency within two hours after learning about the child's death; or

- b. Report the location of the child's corpse to a law enforcement agency within two hours after learning the location of the corpse.
2. This section does not apply to the death of a child which occurs while the child is under the care of a health care professional or emergency medical personnel.

Approved April 15, 2013  
Filed April 16, 2013

## CHAPTER 126

### HOUSE BILL NO. 1214

(Representatives Monson, Damschen, Klemin, Kretschmar, Maragos, Trottier, Boe)  
(Senators Hogue, Nelson)

AN ACT to repeal section 14 of chapter 149 of the 2009 Session Laws, relating to the parenting coordinator program and elimination of the expiration date for chapter 14-09.2 of the North Dakota Century Code; and to declare an emergency.

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

**SECTION 1. REPEAL.** Section 14 of chapter 149 of the 2009 Session Laws is repealed.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 27, 2013

Filed March 27, 2013

## CHAPTER 127

### SENATE BILL NO. 2159

(Senators J. Lee, Sitte, Axness)  
(Representatives Weisz, Hogan)

AN ACT to amend and reenact section 14-15-12 of the North Dakota Century Code, relating to the required residence of the minor before a final decree of adoption.

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

**SECTION 1. AMENDMENT.** Section 14-15-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-15-12. Required residence of minor.**

1. A final decree of adoption may not be issued and an interlocutory decree of adoption does not become final, until the minor to be adopted, other than a stepchild of the petitioner, has lived in the adoptive home:
4. a. For at least six months after placement by an agency;
2. b. For six months after placement by a parent in accordance with an identified relinquishment under chapter 14-15.1;
3. c. As a foster child for at least six months and has been placed for adoption by an agency; or
4. d. For at least six months after the department or the court has been informed of the custody of the minor by the petitioner, and the department or court has had an opportunity to observe or investigate the adoptive home.
2. If a child who has been placed for adoption dies before the six-month residency requirement of subsection 1 is met, the court may grant the final decree of adoption upon a finding that a proper and legitimate reason exists for granting the final decree.

Approved March 19, 2013  
Filed March 19, 2013

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**CHAPTER 128****SENATE BILL NO. 2081**

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 14-18 of the North Dakota Century Code, relating to payment of pregnancy-related services for a surrogate or gestational carrier.

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

**SECTION 1.** A new section to chapter 14-18 of the North Dakota Century Code is created and enacted as follows:

**Responsibility of intended parents for pregnancy-related costs.**

The costs of pregnancy-related services, including labor and delivery services, incurred by a surrogate or gestational carrier as defined by section 14-18-01 are the responsibility of the intended parents.

Approved March 14, 2013  
Filed March 15, 2013