

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1362

Introduced by

Representatives Christensen, Bosch, Heilman, Kasper, Koppelman, Lefor, Meier, M. Ruby

Senators Boehm, Larsen, Paulson, Wobbema

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

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

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

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

7 1. As used in this section:

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

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

12 ~~2. a. A parent possesses a fundamental liberty interest to raise the parent's child~~
13 ~~without undue government interference in the care, custody, and management of~~
14 ~~the parent's child and, at all times, retains a vital interest in preventing the~~
15 ~~irretrievable destruction of family life.~~

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

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

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

1 ~~e. The fundamental liberty interest of a parent is recognized, protected, and does~~
2 ~~not cease to exist because the parent's child is placed in the temporary custody~~
3 ~~of the state.~~

4 ~~f. A fundamentally fair process must be provided to a parent if the state moves to~~
5 ~~challenge or interfere with parental rights.~~

6 ~~(1) A government entity must support any actions or allegations made in~~
7 ~~opposition to the rights and desires of a parent regarding the parent's child~~
8 ~~by sufficient evidence to satisfy a parent's constitutional entitlement to~~
9 ~~heightened protection against government interference with the parent's~~
10 ~~fundamental rights and liberty interests and the right of the child to be~~
11 ~~reared by the child's parent.~~

12 ~~(2) Before adjudication of unfitness, government action in relation to a parent~~
13 ~~and the parent's child may not exceed the least restrictive means of~~
14 ~~alternatives available to accomplish a compelling state interest.~~

15 ~~(3) Until the state proves parental unfitness, and the child suffers, or is~~
16 ~~substantially likely to suffer, serious detriment as a result, the child and the~~
17 ~~child's parent share a vital interest in preventing erroneous termination of~~
18 ~~their relationship and the state may not presume a child and the child's~~
19 ~~parent are adversaries.~~

20 ~~3. If a parent's fundamental rights protected by this section are violated, a parent may~~
21 ~~assert that violation as a claim or defense in a judicial proceeding and may obtain~~
22 ~~appropriate relief against a governmental entity. The prevailing party in an action filed~~
23 ~~under this section is entitled to reasonable attorney's fees and costs.~~

24 4.2. It is the public policy of the state that:

25 a. A parent retains the ~~fundamental~~ right and duty to exercise primary control over
26 the care, supervision, upbringing, and education of the parent's child;

27 b. A child has the right to protection from abuse and neglect; and

28 c. The state retains a compelling interest in ~~preventing, assessing, investigating,~~
29 ~~addressing, and prosecuting, and punishing~~ abuse and neglect.

1 ~~5. The state's education systems are supportive and secondary to the primary role of a~~
2 ~~parent. The legislative assembly is the primary stakeholder in the establishment,~~
3 ~~maintenance, and success of the state's education systems.~~