

September 2000

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 12.1-18 and five new sections to
2 chapter 14-05 of the North Dakota Century Code, relating to the removal of children from the
3 state, to decrees of separation, and the duty to support children; to amend and reenact sections
4 14-04-04, 14-05-03, 14-05-08, 14-05-10, 14-05-17, 14-05-23, 14-05-25.1, and 14-09-08 of the
5 North Dakota Century Code, relating to decrees of separation and divorce; to repeal sections
6 14-05-11 and 14-05-12 and chapter 14-06 of the North Dakota Century Code, relating to
7 separation from bed and board and grounds for divorce; to provide a penalty; and to declare an
8 emergency.

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

10 **SECTION 1.** A new section to chapter 12.1-18 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Removal of child from state in violation of custody decree - Penalty.** Any person
13 who intentionally removes, causes the removal of, or detains the person's own child under the
14 age of eighteen years outside this state with the intent to deny another person's rights under an
15 existing custody decree is guilty of a class C felony. Detaining the child outside this state in
16 violation of the custody decree for more than seventy-two hours is prima facie evidence that the
17 person charged intended to violate the custody decree at the time of removal.

18 **SECTION 2. AMENDMENT.** Section 14-04-04 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **14-04-04. Custody of children.** The court shall award the custody of the children of a
21 marriage annulled on the ground of fraud or force to ~~the innocent parent and also may provide~~
22 ~~for their education and maintenance out of the property of the guilty~~ a party based upon the
23 best interests and welfare of the child criteria set forth in chapter 14-09.

1 **SECTION 3.** A new section to chapter 14-05 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Grounds for separation.** Upon the filing of a complaint by either party to a marriage,
4 the court may grant a temporary or permanent decree of separation for any cause for which a
5 divorce may be decreed.

NOTE: This new section in Chapter 14-05 would replace Section 14-06-01.

6 **SECTION 4. AMENDMENT.** Section 14-05-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **14-05-03. Causes for divorce.** Divorces may be granted for any of the following
9 causes:

- 10 1. Adultery.
- 11 2. Extreme cruelty.
- 12 3. Willful desertion.
- 13 4. Willful neglect.
- 14 5. ~~Habitual intemperance.~~ Abuse of alcohol or controlled substances.
- 15 6. Conviction of felony.
- 16 7. ~~Insanity for a period of five years, the insane person having been an inmate of an~~
17 ~~institution for such period, and affected with any psychosis. No divorce may be~~
18 ~~granted because of insanity until after a thorough examination of such insane~~
19 ~~person by three physicians who are recognized authorities on mental diseases,~~
20 ~~one of which physicians must be the superintendent of the state hospital for the~~
21 ~~mentally ill, or the chief medical officer of a veterans administration hospital or~~
22 ~~government institution within or without the state of North Dakota, the other two~~
23 ~~physicians to be appointed by the court before whom the action is pending, all of~~
24 ~~whom must agree that such insane person is incurable. No divorce may be~~
25 ~~granted to any person whose husband or wife is an inmate of an institution, except~~
26 ~~a United States government hospital or institution, in any other than the state of~~
27 ~~North Dakota, unless the person applying for such divorce has been a resident of~~
28 ~~the state of North Dakota for at least five years~~ Serious mental illness.
- 29 8. Irreconcilable differences.

SECTION 5. AMENDMENT. Section 14-05-08 of the North Dakota Century Code is amended and reenacted as follows:

14-05-08. ~~Habitual intemperance~~ Abuse of alcohol or controlled substances defined. ~~Habitual intemperance~~ Abuse of alcohol or controlled substances is that degree of ~~intemperance from the use of intoxicating drinks, morphine, opium, chloral, cocaine, or other like narcotic drugs,~~ which disqualifies the person a great portion of the time from properly attending to business; or which reasonably would inflict a course of great mental anguish upon the innocent party. For purposes of this chapter, "controlled substance" means a substance as defined in section 19-03.1-01.

SECTION 6. AMENDMENT. Section 14-05-10 of the North Dakota Century Code is amended and reenacted as follows:

14-05-10. Denial of divorce. Divorces must be denied upon showing:

1. ~~Connivance;~~
2. ~~Collusion;~~
3. ~~Condonation;~~ or
4. 2. Limitation and lapse of time.

SECTION 7. AMENDMENT. Section 14-05-17 of the North Dakota Century Code is amended and reenacted as follows:

14-05-17. Residence requirements. A separation or divorce may not be granted unless the plaintiff in good faith has been a resident of the state for six months next preceding commencement of the action. If the plaintiff has not been a resident of this state for the six months preceding commencement of the action, a separation or divorce may be granted if the plaintiff in good faith has been a resident of this state for the six months immediately preceding entry of the decree of separation or divorce.

SECTION 8. Three new sections to chapter 14-05 of the North Dakota Century Code are created and enacted as follows:

Separation - Spousal support - Division of property. Upon the granting of a separation, the court may include in the decree an order requiring a party to pay for spousal support and for the support of any minor children of the parties. Subject to section 14-05-24, the decree may also provide for the equitable division of the property and debts of the parties.

1 **Decree of separation - Effect.** The decree of separation confers upon the parties all
2 the rights of property, business, and contracts as if unmarried and releases both parties from all
3 obligations of maintenance, except as may be required by the decree.

4 **Revocation of decree of spousal support - Divorce granted.** When a decree for
5 separation has been granted, the court, at any time thereafter, may revoke the decree based
6 upon any regulations or restrictions the court imposed in the decree. Application for revocation
7 may be made by either party to the decree. The party making the application for revocation
8 shall provide to the other party to the decree at least ten days' and not more than twenty days'
9 notice of the application. Service must be made in the same manner as service of a summons
10 in a civil action. If it appears to the court at the hearing of the application that reconciliation
11 between the parties to the marriage is improbable, the court shall revoke the spousal support
12 decree and, in lieu of that decree, shall render a decree divorcing the parties. If the court has
13 not previously done so, the court shall provide for the equitable division of the property, shall
14 make orders with respect to any minor children, and may provide for the payment of support to
15 either party by the other.

NOTE: The three new sections in this section would replace Sections 14-06-03,
14-06-04, and 14-06-05.

16 **SECTION 9. AMENDMENT.** Section 14-05-23 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **14-05-23. Temporary support, attorney fees, and custody.** During any time in which
19 an action for separation or divorce is pending, the court, upon application of a party, may issue
20 an order requiring a party to pay such support as may be necessary for the support of a party
21 and minor children of the parties and for the payment of attorney fees. The court in the order
22 may award custody of minor children to a party. The order may be issued and served in
23 accordance with the North Dakota Rules of Court. The court may include in the order a
24 provision for domestic violence protection provided the party has submitted a verified
25 application for the order which is sufficient to meet the criteria defined in subsection 2 of section
26 14-07.1-01. A violation of the protection provision of the order is subject to the penalties
27 established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

28 **SECTION 10.** A new section to chapter 14-05 of the North Dakota Century Code is
29 created and enacted as follows:

1 **Spousal support.** Taking into consideration the circumstances of the parties, the court
2 may require one party to pay spousal support to the other party for any period of time. The
3 court may modify its spousal support orders.

4 **SECTION 11. AMENDMENT.** Section 14-05-25.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **14-05-25.1. Money judgment to secure division of property enforceable by**
7 **contempt proceedings - Exemptions from process not available.** Failure to comply with
8 the provisions of a separation or divorce decree relating to distribution of the property of the
9 parties constitutes contempt of court. A party may also execute on a money judgment, and the
10 obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02.

11 **SECTION 12. AMENDMENT.** Section 14-09-08 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **14-09-08. Mutual duty to support children.** Parents shall give their children support
14 and education suitable to the child's circumstances. The court may compel either of the parties
15 to provide for the support of the children of marriage.

16 **SECTION 13. REPEAL.** Sections 14-05-11 and 14-05-12 and chapter 14-06 of the
17 North Dakota Century Code are repealed.

18 **SECTION 14. EMERGENCY.** Section 1 of this Act is declared to be an emergency
19 measure.