

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1121
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact a new section to chapter 14-09, a new section to chapter 14-18, and chapter 14-20 of the North Dakota Century Code, relating to the termination of parental rights, gestational carriers, and the Uniform Parentage Act; to amend and reenact section 12.1-31-05, subsection 1 of section 14-15-05, subsection 1 of section 14-15-11, sections 14-18-01, 14-18-05, and 14-19-05, and subsection 5 of section 23-02.1-13 of the North Dakota Century Code, relating to gestational carriers and parentage determinations; to repeal sections 14-09-01, 14-09-02, and 14-09-03, chapter 14-17, and sections 14-18-02.1, 14-18-03, 14-18-04, 14-18-06, 14-18-07, 14-19-02, 14-19-03, 14-19-04, 14-19-09, and 14-19-10 of the North Dakota Century Code, relating to the legitimacy of children, the Uniform Parentage Act, the Uniform Status of Children of Assisted Conception Act, and paternity acknowledgment; and to provide for transition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-05. Child procurement - Penalty. Except with respect to fees and charges authorized by law or approved by a court in a proceeding related to the placement of a minor child for adoption or related to the adoption of a minor child, a person is guilty of child procurement, a class C felony, if the person knowingly offers, gives, or agrees to give to another or solicits, accepts, or agrees to accept from another, a thing of value as consideration for the recipient's furnishing or aiding another to furnish a minor child for the purposes of adoption. This section does not apply to parties to any agreement in which a woman agrees to become a surrogate, as defined in section 14-18-01, or to relinquish her rights and duties as parent of a child conceived through assisted ~~conception~~ reproduction, as defined in section ~~14-18-04~~ 14-20-01.

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

Termination of parental rights - Duty of support. A termination of parental rights does not terminate the duty of either parent to support the child before the child's adoption unless that duty is specially terminated by order of the court after notice of a proposed termination or relinquishment is given to the department of human services in the manner appropriate for the service of process in a civil action in this state. A termination of a child support obligation under this section does not relieve a parent of the duty to pay any unpaid child support.

SECTION 3. AMENDMENT. Subsection 1 of section 14-15-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless consent is not required under section 14-15-06, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:
 - a. The mother of the minor whether by birth or adoption;
 - b. The father of the minor, if:

- (1) The minor is the father's child by adoption, or the father has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought; or
 - (2) The person is presumed to be the biological father of the minor under subsection 1 of section ~~14-17-04~~ 14-20-10, provided the nonexistence of the father and child relationship between them has not been judicially determined;
- c. Any individual lawfully entitled to custody of the minor or empowered to consent;
 - d. The court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the minor is not empowered to consent to the adoption;
 - e. The minor, if more than ten years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and
 - f. The spouse of the minor to be adopted.

SECTION 4. AMENDMENT. Subsection 1 of section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

1. a. After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing must be given by the petitioner to the department; any agency or individual whose consent to the adoption is required by this chapter but who has not consented; an individual whose consent is dispensed with upon any ground mentioned in subdivisions a, b, f, h, i, and j of subsection 1 of section 14-15-06 but who has not consented; and any individual identified by the court as a biological parent or a possible biological parent of the minor, upon making inquiry to the extent necessary and appropriate, as in proceedings under ~~sections~~ section 27-20-45 and 14-17-24, unless the individual has relinquished parental rights or the individual's parental rights have been previously terminated by a court. The notice to the department must be accompanied by a copy of the petition.
- b. Notice of the filing of a petition to adopt an adult must be given by the petitioner at least twenty days before the date of the hearing to each living parent of the adult to be adopted.

SECTION 5. AMENDMENT. Section 14-18-01 of the North Dakota Century Code is amended and reenacted as follows:

14-18-01. Definitions. As used in this chapter:

1. "Assisted conception" means a pregnancy resulting from insemination of an egg of a woman with sperm of a man by means other than sexual intercourse or by removal and implantation of an embryo after sexual intercourse but does not include a pregnancy resulting from the insemination of an egg of a wife using her husband's sperm.
2. ~~"Donor" means an individual whose body produces sperm or egg used for the purpose of assisted conception, whether or not a payment is made for the sperm or egg used, but does not include an individual whose body produces sperm or egg used for the purpose of conceiving a child for that individual.~~
3. "Gestational carrier" means an adult woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.

4. 3. "Surrogate" means an adult woman who enters into an agreement to bear a child conceived through assisted conception for intended parents.

SECTION 6. AMENDMENT. Section 14-18-05 of the North Dakota Century Code is amended and reenacted as follows:

14-18-05. Surrogate agreements. Any agreement in which a woman agrees to become a surrogate or to relinquish that woman's rights and duties as parent of a child conceived through assisted conception is void. The surrogate, however, is the mother of a resulting child and the surrogate's husband, if a party to the agreement, is the father of the child. If the surrogate's husband is not a party to the agreement or the surrogate is unmarried, paternity of the child is governed by chapter ~~14-17~~ 14-20.

SECTION 7. A new section to chapter 14-18 of the North Dakota Century Code is created and enacted as follows:

Gestational carrier agreements. A child born to a gestational carrier is a child of the intended parents for all purposes and is not a child of the gestational carrier and the gestational carrier's husband, if any.

SECTION 8. AMENDMENT. Section 14-19-05 of the North Dakota Century Code is amended and reenacted as follows:

14-19-05. Filing of acknowledgment. An acknowledgment of paternity made under ~~this~~ chapter 14-20 must be filed with the state department of health on a form approved by the department, which must include the social security number of the parents and any other information required by the secretary of the United States department of health and human services. Upon request of the department, the state department of health shall furnish a certified copy of an acknowledgment of paternity to the department.

SECTION 9. Chapter 14-20 of the North Dakota Century Code is created and enacted as follows:

14-20-01. (101) Short title. This chapter may be cited as the Uniform Parentage Act.

14-20-02. (102) Definitions. In this chapter:

1. "Acknowledged father" means a man who has established a father-child relationship under sections 14-20-11 through 14-20-24.
2. "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.
3. "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include:
 - a. A presumed father;
 - b. A man whose parental rights have been terminated or declared not to exist; or
 - c. A male donor.
4. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:
 - a. Intrauterine insemination;
 - b. Donation of eggs;

- c. Donation of embryos;
 - d. In vitro fertilization and transfer of embryos; and
 - e. Intracytoplasmic sperm injection.
5. "Child" means an individual of any age whose parentage may be determined under this chapter.
 6. "Commence" means to file the initial pleading seeking an adjudication of parentage in the district court of this state.
 7. "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under sections 14-20-11 through 14-20-24 or adjudication by the court.
 8. "Donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:
 - a. A husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife;
 - b. A woman who gives birth to a child by means of assisted reproduction;
 - c. A parent under sections 14-20-59 through 14-20-65; or
 - d. An individual whose body produces sperm or egg used for the purpose of conceiving a child for that individual.
 9. "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.
 10. "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:
 - a. Deoxyribonucleic acid; and
 - b. Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.
 11. "Gestational carrier" means an adult woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.
 12. "Man" means a male individual of any age.
 13. "Parent" means an individual who has established a parent-child relationship under section 14-20-07.
 14. "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.
 15. "Paternity index" means the likelihood of paternity calculated by computing the ratio between:
 - a. The likelihood that the tested man is the father, based on genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child; and

- b. The likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.
- 16. "Presumed father" means a man who, by operation of law under section 14-20-10, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.
- 17. "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.
- 18. "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.
- 19. "Signatory" means an individual who authenticates a record and is bound by its terms.
- 20. "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.
- 21. "Support enforcement agency" means a public official or agency authorized to seek:
 - a. Enforcement of support orders or laws relating to the duty of support;
 - b. Establishment or modification of child support;
 - c. Determination of parentage; or
 - d. Location of child support obligors and their income and assets.

14-20-03. (103) Scope - Choice of law.

- 1. This chapter applies to determination of parentage in this state.
- 2. The court shall apply the law of this state to adjudicate the parent-child relationship. The applicable law does not depend on:
 - a. The place of birth of the child; or
 - b. The past or present residence of the child.
- 3. This chapter does not create, enlarge, or diminish parental rights or duties under other law of this state.

14-20-04. (104) Courts of this state. The district court is authorized to adjudicate parentage under this chapter.

14-20-05. (105) Protection of participants. Proceedings under this chapter are subject to other law of this state governing the health, safety, privacy, and liberty of a child or other individual who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number, and the child's daycare facility and school.

14-20-06. (106) Determination of maternity. Provisions of this chapter relating to determination of paternity apply to determinations of maternity.

14-20-07. (201) Establishment of parent-child relationship.

1. The mother-child relationship is established between a woman and a child by:
 - a. The woman's having given birth to the child;
 - b. An adjudication of the woman's maternity; or
 - c. Adoption of the child by the woman.
2. The father-child relationship is established between a man and a child by:
 - a. An un rebutted presumption of the man's paternity of the child under section 14-20-10;
 - b. An effective acknowledgment of paternity by the man under sections 14-20-11 through 14-20-24, unless the acknowledgment has been rescinded or successfully challenged;
 - c. An adjudication of the man's paternity;
 - d. Adoption of the child by the man; or
 - e. The man's having consented to assisted reproduction by a woman under sections 14-20-59 through 14-20-65 which resulted in the birth of the child.

14-20-08. (202) No discrimination based on marital status. A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

14-20-09. (203) Consequences of establishment of parentage. Unless parental rights are terminated, a parent-child relationship established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this state.

14-20-10. (204) Presumption of paternity.

1. A man is presumed to be the father of a child if:
 - a. He and the mother of the child are married to each other and the child is born during the marriage;
 - b. He and the mother of the child were married to each other and the child is born within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or after a decree of separation;
 - c. Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred days after its termination by death, annulment, declaration of invalidity, divorce, or after a decree of separation;
 - d. After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
 - (1) The assertion is in a record filed with the state department of health;
 - (2) He agreed to be and is named as the child's father on the child's birth certificate; or
 - (3) He promised in a record to support the child as his own; or

- e. For the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.
2. A presumption of paternity established under this section may be rebutted only by an adjudication under sections 14-20-36 through 14-20-58.

14-20-11. (301) Acknowledgment of paternity. The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity.

14-20-12. (302) Execution of acknowledgment of paternity.

1. An acknowledgment of paternity must:
 - a. Be in a record;
 - b. Be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish his paternity;
 - c. State that the child whose paternity is being acknowledged:
 - (1) Does not have a presumed father, or has a presumed father whose full name is stated; and
 - (2) Does not have another acknowledged or adjudicated father;
 - d. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
 - e. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after one year.
2. An acknowledgment of paternity is void if it:
 - a. States that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the state department of health;
 - b. States that another man is an acknowledged or adjudicated father; or
 - c. Falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.
3. A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

14-20-13. (303) Denial of paternity. A presumed father may sign a denial of his paternity. The denial is valid only if:

1. An acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to section 14-20-15;
2. The denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury; and
3. The presumed father has not previously:

- a. Acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to section 14-20-17 or successfully challenged pursuant to section 14-20-18; or
- b. Been adjudicated to be the father of the child.

14-20-14. (304) Rules for acknowledgment and denial of paternity.

1. An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.
2. An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.
3. Subject to subsection 1, an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the state department of health, whichever occurs later.
4. An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this chapter.
5. An acknowledgment of paternity or denial of paternity may be completed for a child who was not born in this state.

14-20-15. (305) Effect of acknowledgment or denial of paternity.

1. Except as otherwise provided in sections 14-20-17 and 14-20-18, a valid acknowledgment of paternity filed with the state department of health is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent and must be recognized as a basis for a support order in any proceeding to establish, enforce, or modify a support order.
2. Except as otherwise provided in sections 14-20-17 and 14-20-18, a valid denial of paternity by a presumed father filed with the state department of health in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

14-20-16. (306) No filing fee. The state department of health may not charge for filing an acknowledgment of paternity or denial of paternity.

14-20-17. (307) Proceeding for rescission. A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

1. Sixty days after the effective date of the acknowledgment or denial, as provided in section 14-20-14; or
2. The date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

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 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.

14-20-19. (309) Procedure for rescission or challenge.

1. Every signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.
2. For the purpose of rescission of, or challenge to, an acknowledgment of paternity or denial of paternity, a signatory submits to personal jurisdiction of this state by signing the acknowledgment or denial, effective upon the filing of the document with the state department of health.
3. Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.
4. A proceeding to rescind or to challenge an acknowledgment of paternity or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under sections 14-20-36 through 14-20-58.
5. At the conclusion of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court shall order the state department of health to amend the birth record of the child, if appropriate.

14-20-20. (310) Ratification barred. A court or administrative agency conducting a judicial or administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.

14-20-21. (311) Full faith and credit. A court of this state shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other state.

14-20-22. (312) Forms for acknowledgment and denial of paternity.

1. To facilitate compliance with sections 14-20-11 through 14-20-24, the state department of health shall prescribe forms for the acknowledgment of paternity and the denial of paternity.
2. A valid acknowledgment of paternity or denial of paternity is not affected by a later modification of the prescribed form.

14-20-23. (313) Release of information. The state department of health may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to courts and appropriate state or federal agencies of this or another state.

14-20-24. (314) Adoption of rules. The state department of health may adopt rules to implement sections 14-20-11 through 14-20-23.

14-20-25. (501) Scope. Sections 14-20-25 through 14-20-35 govern genetic testing of an individual to determine parentage, whether the individual:

1. Voluntarily submits to testing; or

2. Is tested pursuant to an order of the court or a support enforcement agency.

14-20-26. (502) Order for testing.

1. Except as otherwise provided in sections 14-20-25 through 14-20-58, the court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:
 - a. Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or
 - b. Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
2. A support enforcement agency may order genetic testing only if there is no presumed, acknowledged, or adjudicated father.
3. If a request for genetic testing of a child is made before birth, the court or support enforcement agency may not order in utero testing.
4. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

14-20-27. (503) Requirements for genetic testing.

1. Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:
 - a. The American association of blood banks, or a successor to its functions;
 - b. The American society for histocompatibility and immunogenetics, or a successor to its functions; or
 - c. An accrediting body designated by the federal secretary of health and human services.
2. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.
3. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the data bases from which to select frequencies for use in calculation of the probability of paternity. If there is a disagreement as to the testing laboratory's choice, the following rules apply:
 - a. The individual objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory.
 - b. The individual objecting to the testing laboratory's initial choice shall:
 - (1) If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
 - (2) Engage another testing laboratory to perform the calculations.
 - c. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing

laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

4. If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a man as the father of a child under section 14-20-29, an individual who has been tested may be required to submit to additional genetic testing.

14-20-28. (504) Report of genetic testing.

1. A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of sections 14-20-25 through 14-20-35 is self-authenticating.
2. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:
 - a. The names and photographs of the individuals whose specimens have been taken;
 - b. The names of the individuals who collected the specimens;
 - c. The places and dates the specimens were collected;
 - d. The names of the individuals who received the specimens in the testing laboratory; and
 - e. The dates the specimens were received.

14-20-29. (505) Genetic testing results - Rebuttal.

1. Under this chapter, a man is rebuttably identified as the father of a child if the genetic testing complies with sections 14-20-25 through 14-20-35 and the results disclose that:
 - a. The man has at least a ninety-nine percent probability of paternity, using a prior probability of five-tenths, as calculated by using the combined paternity index obtained in the testing; and
 - b. A combined paternity index of at least one hundred to one.
2. A man identified under subsection 1 as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of sections 25 through 35 of this Act which:
 - a. Excludes the man as a genetic father of the child; or
 - b. Identifies another man as the possible father of the child.
3. Except as otherwise provided in section 14-20-34, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

14-20-30. (506) Costs of genetic testing.

1. Subject to assessment of costs under sections 14-20-36 through 14-20-58, the cost of initial genetic testing must be advanced:
 - a. By a support enforcement agency in a proceeding in which the support enforcement agency is providing services;
 - b. By the individual who made the request;

- c. As agreed by the parties; or
 - d. As ordered by the court.
2. In cases in which the cost is advanced by the support enforcement agency, the agency may seek reimbursement from a man who is rebuttably identified as the father.

14-20-31. (507) Additional genetic testing. The court or the support enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child under section 14-20-29, the court or agency may not order additional testing unless the party provides advance payment for the testing.

14-20-32. (508) Genetic testing when specimens not available.

1. Subject to subsection 2, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the court considers to be just, the court may order the following individuals to submit specimens for genetic testing:
 - a. The parents of the man;
 - b. Brothers and sisters of the man;
 - c. Other children of the man and their mothers; and
 - d. Other relatives of the man necessary to complete genetic testing.
2. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

14-20-33. (509) Deceased individual. For good cause shown, the court may order genetic testing of a deceased individual.

14-20-34. (510) Identical brothers.

1. The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.
2. If each brother satisfies the requirements as the identified father of the child under section 14-20-29 without consideration of another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

14-20-35. (511) Confidentiality of genetic testing. The report of genetic testing for parentage is confidential. An individual who knowingly releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen is subject to section 12.1-13-01.

14-20-36. (601) Proceeding authorized. A civil proceeding may be maintained to adjudicate the parentage of a child. The proceeding is governed by the North Dakota Rules of Civil Procedure.

14-20-37. (602) Standing to maintain proceeding. Subject to sections 14-20-11 through 14-20-24 and sections 14-20-42 and 14-20-44, a proceeding to adjudicate parentage may be maintained by:

1. The child;
2. The mother of the child;

3. A man whose paternity of the child is to be adjudicated;
4. The support enforcement agency;
5. An authorized adoption agency or licensed child-placing agency; or
6. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

14-20-38. (603) Parties to proceeding. The following individuals must be joined as parties in a proceeding to adjudicate parentage:

1. The mother of the child; and
2. A man whose paternity of the child is to be adjudicated.

14-20-39. (604) Personal jurisdiction.

1. An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.
2. A court of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in section 14-12.2-04 are fulfilled.
3. Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

14-20-40. (605) Venue. Venue for a proceeding to adjudicate parentage is in the county of this state in which:

1. The child resides or is found;
2. The respondent resides or is found if the child does not reside in this state; or
3. A proceeding for probate or administration of the presumed or alleged father's estate has been commenced.

14-20-41. (606) No limitation - Child having no presumed, acknowledged, or adjudicated father. A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

1. The child becomes an adult, but only if the child initiates the proceeding; or
2. An earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

14-20-42. (607) Limitation - Child having presumed father.

1. Except as otherwise provided in subsection 2, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than two years after the birth of the child.
2. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:
 - a. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and

- b. The presumed father never openly held out the child as his own.
- 3. For purposes of this section and section 14-20-43, an action to establish support for a child is a proceeding to adjudicate parentage if the child's presumed father raises nonpaternity as a defense to the action.

14-20-43. (608) Authority to deny motion for genetic testing.

- 1. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the court may deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or acknowledged father if the court determines that:
 - a. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and
 - b. It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.
- 2. In determining whether to deny a motion seeking an order for genetic testing under this section, the court shall consider the best interest of the child, including the following factors:
 - a. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;
 - b. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;
 - c. The facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;
 - d. The nature of the relationship between the child and the presumed or acknowledged father;
 - e. The age of the child;
 - f. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;
 - g. The nature of the relationship between the child and any alleged father;
 - h. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and
 - i. Other factors that may affect the qualities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.
- 3. In a proceeding involving the application of this section, a minor or incapacitated child must be represented by a guardian ad litem.
- 4. Denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.
- 5. If the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

14-20-44. (609) Limitation - Child having acknowledged or adjudicated father.

1. If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of the child only within the time allowed under section 14-20-17 or 14-20-18.
2. If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of a paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than two years after the effective date of the acknowledgment or adjudication.
3. A proceeding under this section is subject to the application of the principles of estoppel established in section 14-20-43.

14-20-45. (610) Joinder of proceedings.

1. Except as otherwise provided in subsection 2, a proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate, or other appropriate proceeding.
2. A respondent may not join a proceeding described in subsection 1 with a proceeding to adjudicate parentage brought under chapter 14-12.2.

14-20-46. (611) Proceeding before birth. A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

1. Service of process;
2. Discovery; and
3. Except as prohibited by section 14-20-26, collection of specimens for genetic testing.

14-20-47. (612) Child as party - Representation.

1. A minor child is a permissible party, but is not a necessary party to a proceeding under sections 14-20-36 through 14-20-58.
2. The court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the court finds that the interests of the child are not adequately represented.

14-20-48. (621) Admissibility of results of genetic testing - Expenses.

1. Except as otherwise provided in subsection 3, a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:
 - a. Voluntarily or pursuant to an order of the court or a support enforcement agency; or
 - b. Before or after the commencement of the proceeding.
2. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

3. If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:
 - a. With the consent of both the mother and the presumed, acknowledged, or adjudicated father; or
 - b. Pursuant to an order of the court under section 14-20-26.
4. Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:
 - a. The amount of the charges billed; and
 - b. That the charges were reasonable, necessary, and customary.

14-20-49. (622) Consequences of declining genetic testing.

1. An order for genetic testing is enforceable by contempt.
2. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that individual.
3. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

14-20-50. (623) Admission of paternity authorized.

1. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.
2. If the court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity.

14-20-51. (624) Temporary order.

1. In a proceeding under sections 14-20-36 through 14-20-58, the court shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:
 - a. A presumed father of the child;
 - b. Petitioning to have his paternity adjudicated;
 - c. Identified as the father through genetic testing under section 14-20-29;
 - d. An alleged father who has declined to submit to genetic testing;
 - e. Shown by clear and convincing evidence to be the father of the child; or
 - f. The mother of the child.
2. A temporary order may include provisions for custody and visitation as provided by other law of this state.

14-20-52. (631) Rules for adjudication of paternity. The court shall apply the following rules to adjudicate the paternity of a child:

1. The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.
2. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under section 14-20-29 must be adjudicated the father of the child.
3. If the court finds that genetic testing under section 14-20-29 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.
4. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child.

14-20-53. (632) Jury prohibited. The court, without a jury, shall adjudicate paternity of a child.

14-20-54. (633) Hearings - Inspection of records.

1. On request of a party and for good cause shown, the court may close a proceeding under sections 14-20-36 through 14-20-58.
2. A final order in a proceeding under sections 14-20-36 through 14-20-58 is available for public inspection. Other papers and records are available only with the consent of the parties or on order of the court for good cause.

14-20-55. (634) Order on default. The court shall issue an order adjudicating the paternity of a man who:

1. After service of process, is in default; and
2. Is found by the court to be the father of a child.

14-20-56. (635) Dismissal for want of prosecution. The court may issue an order dismissing a proceeding commenced under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

14-20-57. (636) Order adjudicating parentage.

1. The court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.
2. An order adjudicating parentage must identify the child by name and date of birth.
3. The order must include the social security numbers of the child and the individuals determined to be the child's parents.
4. The order may contain any other provision in the best interest of the child, including payment of support, payment of expenses of the mother's pregnancy and confinement, custody of the child, visitation with the child, and furnishing of bond or other security for payment of support. A support order must be for a monthly payment in an amount consistent with the guidelines established under section 14-09-09.7 and must be subject to section 14-09-08.1. All remedies for the enforcement of support, custody, and visitation

orders apply. The court has continuing jurisdiction to modify an order for future support and, subject to section 14-09-09.6, custody of and visitation with the child.

5. Except as otherwise provided in subsection 6, the court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under sections 14-20-36 through 14-20-58. The court may award attorney's fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.
6. The court may not assess fees, costs, or expenses against the support enforcement agency of this state or another state, except as provided by other law.
7. On request of a party and for good cause shown, the court may order that the name of the child be changed.
8. If the order of the court is at variance with the child's birth certificate, the court shall order the state department of health to issue an amended birth registration.
9. An order adjudicating parentage must be filed with the state department of health.

14-20-58. (637) Binding effect of determination of parentage.

1. Except as otherwise provided in subsection 2, a determination of parentage is binding on:
 - a. All signatories to an acknowledgment or denial of paternity as provided in sections 14-20-11 through 14-20-24; and
 - b. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of section 14-12.2-04.
2. A child is not bound by a determination of parentage under this chapter unless:
 - a. The determination was based on an unrestricted acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;
 - b. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or
 - c. The child was a party or was represented in the proceeding determining parentage by a guardian ad litem.
3. In a proceeding to dissolve a marriage, the court is deemed to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy the jurisdictional requirements of section 14-12.2-04, and the final order:
 - a. Expressly identifies a child as a "child of the marriage", "issue of the marriage", or similar words indicating that the husband is the father of the child; or
 - b. Provides for support of the child, custody of the child, or visitation with the child by the husband unless paternity is specifically disclaimed in the order.
4. Except as otherwise provided in subsection 2, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.
5. A party to an adjudication of paternity may challenge the adjudication only under law of this state relating to appeal, vacation of judgments, or other judicial review.

14-20-58.1. Liability for collection of support.

1. As used in this section, "former parent" means an acknowledged father who successfully rescinded or challenged an acknowledgment of paternity under this chapter, a presumed father whose parentage was successfully rebutted under this chapter, or an adjudicated father whose parentage was disestablished after an order issued under this chapter was vacated.
2. The state is not liable for child support that was collected from or on behalf of a former parent and disbursed to an obligee as defined in section 14-09-09.10.
3. The state is not liable for child support that was collected from or on behalf of a former parent and retained by the state unless ordered by a court after being presented with genetic test results that would otherwise be admissible under this chapter showing that the former parent is not the genetic parent of the child.

14-20-59. (701) Scope. Sections 14-20-59 through 14-20-65 do not apply to the birth of a child conceived by means of sexual intercourse.

14-20-60. (702) Parental status of donor. A donor is not a parent of a child conceived by means of assisted reproduction.

14-20-61. (703) Paternity of child of assisted reproduction. A man who provides sperm for, or consents to, assisted reproduction by a woman as provided in section 14-20-62 with the intent to be the parent of her child, is a parent of the resulting child. Parentage of a child born to a gestational carrier is governed by chapter 14-18.

14-20-62. (704) Consent to assisted reproduction.

1. Consent by a woman, and a man who intends to be a parent of a child born to the woman by assisted reproduction, must be in a record signed by the woman and the man. This requirement does not apply to a donor.
2. Failure by a man to sign a consent required by subsection 1, before or after birth of the child, does not preclude a finding of paternity if the woman and the man, during the first two years of the child's life, resided together in the same household with the child and openly held out the child as their own.

14-20-63. (705) Limitation on husband's dispute of paternity.

1. Except as otherwise provided in subsection 2, the husband of a wife who gives birth to a child by means of assisted reproduction may not challenge his paternity of the child unless:
 - a. Within two years after learning of the birth of the child he commences a proceeding to adjudicate his paternity; and
 - b. The court finds that he did not consent to the assisted reproduction, before or after birth of the child.
2. A proceeding to adjudicate paternity may be maintained at any time if the court determines that:
 - a. The husband did not provide sperm for, or before or after the birth of the child consent to, assisted reproduction by his wife;
 - b. The husband and the mother of the child have not cohabited since the probable time of assisted reproduction; and
 - c. The husband never openly held out the child as his own.

3. The limitation provided in this section applies to a marriage declared invalid after assisted reproduction.

14-20-64. (706) Effect of dissolution of marriage or withdrawal of consent.

1. If a marriage is dissolved before placement of eggs, sperm, or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a record that if assisted reproduction were to occur after a divorce, the former spouse would be a parent of the child.
2. The consent of a woman or a man to assisted reproduction may be withdrawn by that individual in a record at any time before placement of eggs, sperm, or embryos. An individual who withdraws consent under this section is not a parent of the resulting child.

14-20-65. (707) Parental status of deceased individual. If an individual who consented in a record to be a parent by assisted reproduction dies before placement of eggs, sperm, or embryos, the deceased individual is not a parent of the resulting child unless the deceased spouse consented in a record that if assisted reproduction were to occur after death, the deceased individual would be a parent of the child.

14-20-66. (901) Uniformity of application and construction. In applying and construing the chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 10. AMENDMENT. Subsection 5 of section 23-02.1-13 of the North Dakota Century Code is amended and reenacted as follows:

5. If the child is not born during the marriage of the mother, or within three hundred days after a marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the father may not be entered on the birth certificate unless:
 - a. After the child's birth, the father and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
 - (1) He has acknowledged his paternity of the child in writing filed with the state registrar;
 - (2) With his consent, he is named as the child's father on the child's birth certificate; or
 - (3) He is obligated to support the child under a written voluntary promise or by court order;
 - b. ~~While the child is under the age of majority, he received the child into his home and openly holds out the child as his natural child;~~
 - e. After the child's birth, the child's natural mother and the father voluntarily acknowledge the child's paternity in a writing signed by both and filed with the state registrar; or
 - e. c. A court or other entity of competent jurisdiction has adjudicated paternity.

SECTION 11. REPEAL. Sections 14-09-01, 14-09-02, and 14-09-03, chapter 14-17, and sections 14-18-02.1, 14-18-03, 14-18-04, 14-18-06, 14-18-07, 14-19-02, 14-19-03, 14-19-04, 14-19-09, and 14-19-10 of the North Dakota Century Code are repealed.

SECTION 12. TRANSITION. A proceeding to adjudicate parentage which was commenced before the effective date of this chapter is governed by the law in effect at the time the proceeding was commenced.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1121.

House Vote: Yeas 89 Nays 0 Absent 5

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State