

**SENATE BILL NO. 2327**

Introduced by

Senators Clemens, Dever

Representatives Dyk, Hoverson

1 A BILL for an Act to create and enact chapter 14-15.2 and a new section to chapter 44-04 of the  
2 North Dakota Century Code, relating to the creation of the fathers' adoption registry and an  
3 exemption to open records requests pertaining to the registry; to amend and reenact sections  
4 14-15-09 and 14-15-19 of the North Dakota Century Code, relating to the requirements to  
5 petition for adoption and relinquishment of parental rights; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Section 14-15-09 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **14-15-09. Petition for adoption.**

- 10 1. A petition for adoption must be signed and verified by the petitioner, filed with the clerk  
11 of the court, and state:
- 12 a. The date and place of birth of the individual to be adopted, if known.
  - 13 b. The name to be used for the individual to be adopted.
  - 14 c. The date petitioner acquired custody or date of placement of the minor and the  
15 name of the individual placing the minor.
  - 16 d. The full name, age, place, and duration of residence of the petitioner.
  - 17 e. The marital status of the petitioner, including the date and place of marriage, if  
18 married.
  - 19 f. That the petitioner has facilities and resources, including those available under a  
20 subsidy agreement, suitable to provide for the nurture and care of the minor to be  
21 adopted, and that it is the desire of the petitioner to establish the relationship of  
22 parent and child with the individual to be adopted.
  - 23 g. A description and estimate of value of any property of the individual to be  
24 adopted.

- 1           h. The name of any individual whose consent to the adoption is required, but who  
2           has not consented, and facts or circumstances which excuse the lack of the  
3           individual's consent normally required to the adoption.
- 4           i. The department as respondent.
- 5           j. The human service zone as respondent if the minor to be adopted is in the  
6           custody of the human service zone.
- 7           k. That the petitioner's expenses were reasonable as verified by the court.  
8           Reasonable fees may be charged for professional services and living expenses if  
9           reflected in a report of agreements and disbursements filed under this chapter  
10          and approved by the court. The fees may not be contingent upon placement of  
11          the child for adoption, consent to adoption, or cooperation in the completion of  
12          adoption. Reasonable fees may include:
- 13          (1) Preplacement counseling, adoption assessment, placement of the child,  
14          foster care, or other preadoption services, which must be paid directly to the  
15          provider of the services;
- 16          (2) Legal fees relating to the petition for relinquishment or adoption, that must  
17          be paid directly to the provider of the services;
- 18          (3) Medical expenses relating to prenatal care and the birth of the child, that are  
19          not already covered by health insurance;
- 20          (4) Expenses for transportation, meals, and lodging incurred for placement of  
21          the child or in order to receive counseling, legal, or medical services related  
22          to the pregnancy, birth, or placement; and
- 23          (5) Living expenses of the birth mother which are needed to maintain an  
24          adequate standard of living, which the birth mother is unable to otherwise  
25          maintain because of loss of income or other support resulting from the  
26          pregnancy.
- 27          (a) The payments may cover expenses incurred during the  
28          pregnancy-related incapacity but not for a period longer than six  
29          weeks following the delivery, unless the court determines within the  
30          six-week period that the birth mother is unable to be employed due to  
31          physical limitations relating to the birth of the child.

- 1 (b) Living expenses do not include expenses for lost wages, gifts,  
2 educational expenses, vacations, or other similar expenses of a birth  
3 mother.
- 4 2. A certified copy of the birth certificate or verification of birth record of the individual to  
5 be adopted, if available, certified proof of a search of the fathers' adoption registry as  
6 required in section 14-15.2-03, and the required consents and relinquishments must  
7 be filed with the clerk.
- 8 3. Any individual filing a petition shall pay to the clerk of court a filing fee as prescribed in  
9 subsection 1 of section 27-05.2-03 and section 14-15.2-13.

10 **SECTION 2. AMENDMENT.** Section 14-15-19 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **14-15-19. Relinquishment and termination of parent and child relationship.**

- 13 1. The rights of a parent with reference to a child, including parental right to control the  
14 child or to withhold consent to an adoption, may be relinquished and the relationship of  
15 parent and child terminated in or before an adoption action as provided in this section.
- 16 2. All rights of a parent with reference to a child, including the right to receive notice of a  
17 hearing on a petition for adoption, may be relinquished and the relationship of parent  
18 and child terminated by a writing, signed by the parent, regardless of the age of the  
19 parent:
- 20 a. In the presence of a representative of an agency taking custody of the child,  
21 whether the agency is within or outside of the state or in the presence and with  
22 the approval of a judge of a court of record within or outside this state in which  
23 the minor was present or in which the parent resided at the time it was signed; or
- 24 b. In any other situation if the petitioner has had custody of the minor for two years,  
25 but only if notice of the adoption proceeding has been given to the parent and the  
26 court finds, after considering the circumstances of the relinquishment and the  
27 long-continued custody by the petitioner, that the best interest of the child  
28 requires the granting of the adoption.
- 29 3. In addition to any other action or proceeding provided by law, the relationship of parent  
30 and child may be terminated by a court order issued in connection with an adoption

1 action under this chapter on any ground provided by other law for termination of the  
2 relationship, and in any event on the ground that:

- 3 a. ~~That the~~The minor has been abandoned by the parent;
- 4 b. ~~That by~~By reason of the misconduct, faults, or habits of the parent or the  
5 repeated and continuous neglect or refusal of the parent, the minor is without  
6 proper parental care and control, or subsistence, education, or other care or  
7 control necessary for the minor's physical, mental, or emotional health or morals,  
8 or, by reason of physical or mental incapacity the parent is unable to provide  
9 necessary parental care for the minor, and the court finds that the conditions and  
10 causes of the behavior, neglect, or incapacity are irremediable or will not be  
11 remedied by the parent, and that by reason thereof the minor is suffering or  
12 probably will suffer serious physical, mental, moral, or emotional harm; or
- 13 c. ~~That in~~In the case of a parent not having custody of a minor, the noncustodial  
14 parent's consent is being unreasonably withheld contrary to the best interest of  
15 the minor.

16 4. For the purpose of proceeding under this chapter, a decree terminating all rights of a  
17 parent with reference to a child or the relationship of parent and child issued by a court  
18 of competent jurisdiction in this or any other state dispenses with the consent to  
19 adoption proceedings of a parent whose rights or parent and child relationship are  
20 terminated by the decree and with any required notice of an adoption action other than  
21 as provided in this section.

22 5. A petition for termination of the relationship of parent and child made in connection  
23 with an adoption action may be made by:

- 24 a. Either parent if termination of the relationship is sought with respect to the other  
25 parent;
- 26 b. The petitioner for adoption, the guardian of the individual, the legal custodian of  
27 the child, or the individual standing in parental relationship to the child;
- 28 c. An agency; or
- 29 d. Any other individual having a legitimate interest in the matter.

30 6. a. If the identity of the father or mother is known and an address for service is also  
31 known, or the address can be ascertained with reasonable diligence, the father or

- 1 mother must be personally served the petition and notice for termination of  
2 parental rights in compliance with the North Dakota Rules of Civil Procedure.
- 3 b. If the location or identity of the father ~~or mother is unknown but the father's or~~  
4 ~~mother's location is known, and the identity of the father or mother cannot be~~  
5 ~~ascertained with reasonable diligence, notice must be given by publication of the~~  
6 ~~petition at least once a week for three consecutive weeks in the official~~  
7 ~~newspaper of the county in which the unknown father or mother is located~~  
8 searching the fathers' adoption registry in accordance with chapter 14-15.2.
- 9 c. If the ~~identity and~~ location of the father ~~or mother are unknown and the location~~  
10 ~~and identity of the father or mother cannot be ascertained with reasonable~~  
11 ~~diligence, notice must be given by publication of the petition at least once a week~~  
12 ~~for three consecutive weeks in the official newspaper of the county in which~~  
13 ~~conception occurred.~~
- 14 d. The last publication or the interested party's request for a search of the fathers'  
15 adoption registry as required under this subsection must be occur at least ten  
16 days before the time set for hearing. Proof of publication of the notice or proof of  
17 the fathers' adoption registry search must be made at or before the hearing and  
18 filed in the proceeding.
- 19 7. Before the petition is heard, notice of the hearing on the petition and opportunity to be  
20 heard must be given the parents of the child, the guardian of the child, the person  
21 having legal custody of the child, any proposed custodian of the child, and, in the  
22 discretion of the court, a person representing any party.
- 23 8. Notwithstanding the provisions of subsection 2, a relinquishment of parental rights with  
24 respect to a child, executed under this section, may be withdrawn by the parent, and a  
25 decree of a court terminating the parent and child relationship under this section may  
26 be vacated by the court upon motion of the parent, if the child is not on placement for  
27 adoption and the person having custody of the child consents in writing to the  
28 withdrawal or vacation of the decree.

29 **SECTION 3.** Chapter 14-15.2 of the North Dakota Century Code is created and enacted as  
30 follows:

1        **14-15.2-01. Definitions.**

2        As used in this chapter, unless the context otherwise requires:

- 3        1. "Alleged father" means an alleged father interested in a minor child who is, or is  
4            expected to be, the subject of an adoption proceeding and whose mother resides in  
5            this state.
- 6        2. "Department" means the department of health and human services.
- 7        3. "Executive director" means the executive director of the department of health and  
8            human services.
- 9        4. "Interested party" includes an individual intending to adopt a child, a child welfare  
10           agency with which the mother has placed or has given written notice of her intention to  
11           place a child for adoption, the mother of a child, or an attorney representing an  
12           interested party.

13       **14-15.2-02. Establishment of registry - Fees.**

14       The executive director shall establish the fathers' adoption registry. The fathers' adoption  
15       registry shall identify and locate a registered alleged father so an interested party may provide  
16       notice of a petition to adopt a minor as required under section 14-15-11. A search of the fathers'  
17       adoption registry may serve as notice of relinquishment and termination of parental rights if  
18       subdivision c or d of subsection 6 of section 14-15-19 apply. A limitation on an alleged father's  
19       right to assert an interest in the child as provided in this section applies only in adoption  
20       proceedings and does not apply to an individual entitled to notice and consent under section  
21       14-15-05 or 14-15-11. A registrant is responsible for updating his personal information on the  
22       registry. The executive director may establish informational material and public service  
23       announcements necessary to implement this section.

- 24       1. The fathers' adoption registry must include the following information:
- 25           a. With respect to the alleged father, the:
- 26                (1) Name, including any other names by which the alleged father may be  
27                        known;
- 28                (2) Address at which he may be served with notice under this chapter, including  
29                        any change of address;
- 30                (3) Social security number, if known;
- 31                (4) Date of birth; and

- 1                   (5) If applicable, a certified copy of an order by a court of another state or  
2                   territory of the United States adjudicating the alleged father to be the father  
3                   of the child;
- 4           b. With respect to the mother of the child, if known, her:
- 5                   (1) Name, including all other names by which the mother may be known;  
6                   (2) Last address;  
7                   (3) Social security number; and  
8                   (4) Date of birth;
- 9           c. If known to the alleged father, the name, gender, place of birth, and date of birth  
10           or anticipated date of birth of the child;
- 11           d. The date the registration is postmarked or the date it was delivered to the  
12           executive director by means other than mail to the address on the registration  
13           form; and
- 14           e. Other information the executive director determines by rule to be necessary for  
15           the orderly administration of the registry.
- 16   2. The executive director shall notify the mother of the child whenever an alleged father  
17   has registered with the fathers' adoption registry under this section. Notice must be  
18   sent to the name and address submitted by the alleged father under paragraph 2 of  
19   subdivision b of subsection 1 of this section. If no current address for the mother is  
20   submitted by the alleged father, the executive director may not notify the mother  
21   unless she has provided the fathers' adoption registry with her name and address.  
22   Notice must be mailed within fourteen days of the date the executive director received  
23   the alleged father's adoption registration unless a search has been requested under  
24   section 14-15.2-03. There may be no charge to the birth mother for this notice.
- 25   3. The executive director shall set reasonable fees for the use of the registry. An alleged  
26   father may not be charged a fee for registering. The executive director shall deposit  
27   funds collected under this section in the department of health and human services  
28   operating fund for administering the fathers' adoption registry, subject to legislative  
29   appropriations.

1        **14-15.2-03. Requirement to search registry before adoption petition may be granted -**

2        **Proof of search.**

- 3        1. A petition for adoption may not be granted unless an interested party searches the  
4        registry and provides proof of the search. A search may not be conducted until the  
5        sixth business day following the birth of the child.
- 6        2. Proof of the search may be produced with a certified copy of the alleged father's  
7        registration form or by a certified statement of the executive director that no  
8        registration of an alleged father in relation to a child who is or may be the subject of an  
9        adoption petition could be located. The department shall produce proof of the search  
10       within five business days of the interested party's request.
- 11       3. Proof of search of the registry must be filed with the court before entry of any final  
12       order of adoption.

13       **14-15.2-04. Search of registry for child support enforcement purposes.**

14       Upon request of a public authority or child support agency, the executive director may  
15       search the registry to determine whether an alleged father is registered in relation to a child who  
16       is or may be the subject of a child support obligation. A search of the registry may be proven by  
17       the production of a certified copy of the alleged father's registration form or by a certified  
18       statement of the executive director that after a search, no registration of an alleged father in  
19       relation to the child could be located. A public authority or child support agency may not be  
20       charged a fee for use of the registry.

21       **14-15.2-05. Classification of registry data.**

22       Records and data in the fathers' adoption registry are exempt records. An individual who  
23       receives data under this section may use the data only for purposes authorized under this  
24       section or other law. Data in the registry may be released to:

- 25       1. An individual who is required to search the registry under section 14-15.2-03 if the  
26       data relates to the child who is or may be the subject of the adoption petition;
- 27       2. The mother of the child listed on the alleged father's registration form who the  
28       executive director is required to notify under subsection 2 of section 14-15.2-02;
- 29       3. A public authority as provided in section 14-15.2-04; or
- 30       4. An attorney who has signed an affidavit from the executive director attesting that the  
31       attorney represents the birth mother or the prospective adoptive parents.

1        **14-15.2-06. Criminal penalty for registering false information.**

2        An individual who knowingly or intentionally registers false information under this section is  
3 guilty of a class A misdemeanor.

4        **14-15.2-07. Failure to register.**

5        1. Except for an alleged father entitled to notice and consent under section 14-15-05 or  
6 14-15-11, an alleged father who fails to register by the seventh day following the birth  
7 of the child:

- 8        a. Is barred from bringing or maintaining an action to assert an interest in the child  
9 during the pending adoption proceeding concerning the child;  
10        b. Is considered to have waived any right to notice of a hearing in a judicial  
11 proceeding for adoption of the child; and  
12        c. Is considered to have relinquished the rights of a parent with reference to a child  
13 and the relationship of parent and child is terminated.

14        2. An alleged father who has not timely registered under subsection 1 is considered to  
15 have timely registered if he proves by clear and convincing evidence that:

- 16        a. It was not possible for him to register by the seventh day following the birth of the  
17 child;  
18        b. His failure to register was through no fault of his own; and  
19        c. He registered within seven days after it became possible for him to file.

20        3. A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to  
21 register.

22        **14-15.2-08. Notice and service for those on fathers' adoption registry who are not**  
23 **otherwise entitled to notice.**

24        1. Any time after conception, an interested party may serve by certified mail the fathers'  
25 adoption registry forms created by the state court administrator pursuant to section  
26 14-15.2-10 to a registered alleged father. These documents may be served on an  
27 alleged father in accordance with the North Dakota Rules of Civil Procedure, or in lieu  
28 of personal service, service may be made as follows:

- 29        a. The interested party or that party's attorney shall mail to a registered alleged  
30 father, a copy of the fathers' adoption registry forms, return receipt requested.

1           The receipt for certified mail must state the name and address of the addressee  
2           and the date of mailing, and must be attached to the original notice.

3           b. The return receipt, when filed with the court, must be attached to the original  
4           fathers' adoption registry forms.

5           2. The court administrator shall note the fact of service in a permanent record.

6           **14-15.2-09. Response to notice to registered alleged father - Limitation of rights for**  
7           **failure to respond and upon filing of denial of paternity.**

8           1. For an alleged father to preserve the right to maintain an interest in the child and  
9           receive notice during the pending adoption proceeding, the alleged father shall file a  
10           completed intent to claim parental rights form within seven days of receipt of the  
11           fathers' adoption registry forms with the court administrator in the county in which the  
12           adoption petition will be filed, as provided by the petitioner, stating he intends to initiate  
13           a paternity action within thirty days of receipt of the notice to registered alleged father.  
14           Failure to initiate a paternity action within thirty days of receipt of the notice to  
15           registered alleged father does not act as a bar to receiving notice under section  
16           14-15-11. If good cause is shown, the alleged father must be allowed more time to  
17           initiate the paternity action.

18           2. An alleged father who files a completed denial of paternity form and consent to  
19           adoption form or who fails to timely file an intent to claim parental rights form with the  
20           court:

21           a. Is barred from bringing or maintaining an action to assert an interest in the child  
22           during the pending adoption proceeding concerning the child;

23           b. Is considered to have waived any right to notice of a hearing in a judicial  
24           proceeding for adoption of the child; and

25           c. Is considered to have relinquished the rights of a parent with reference to a child  
26           and the relationship of parent and child is terminated.

27           3. Failure to register under this chapter is prima facie evidence of sufficient grounds to  
28           support termination of the alleged father's parental rights.

29           **14-15.2-10. Fathers' adoption registry forms.**

30           The state court administrator shall develop the following forms:

31           1. Notice to registered alleged father:

- 1       2. Intent to claim parental rights;
- 2       3. Denial of paternity;
- 3       4. Consent to adoption; and
- 4       5. Notice to registered alleged father of the county in which the adoption petition will be
- 5       filed.

6       **14-15.2-11. Right to counsel at public expense.**

7       Upon proof of indigence, an alleged father who has registered with the fathers' adoption  
8 registry, has received a notice to registered alleged father, and has timely filed an intent to claim  
9 paternal rights form with the court administrator, must have counsel appointed at public  
10 expense.

11       **14-15.2-12. Applicability of Indian Child Welfare Act.**

12       In an action involving an Indian child, the Indian Child Welfare Act of 1978, [25 U.S.C. 1901  
13 through 1923], controls to the extent the provisions of this chapter are inconsistent with those  
14 laws. The public acts, records, and judicial proceedings of any Indian tribe that provides an  
15 acknowledgment of paternity or that establish paternity pursuant to tribal law or custom must be  
16 given full faith and credit as provided in the Indian Child Welfare Act. This section does not  
17 defeat the right of an Indian father who has acknowledged or established his paternity pursuant  
18 to tribal law or custom to commence a paternity proceeding, except no father may file a  
19 paternity proceeding after the entry of a final decree of adoption.

20       **14-15.2-13. Fees for fathers' adoption registry.**

21       In addition to any other filing fees, the state court administrator shall assess a seventy-five  
22 dollar adoption filing fee surcharge on an adoption petition filed in a district court. The state  
23 court administrator shall remit funding collected under this section to the state treasurer. The  
24 state treasurer shall deposit fees collected under this section in the department of health and  
25 human services operating fund for the purpose of implementing and maintaining the fathers'  
26 adoption registry, subject to legislative appropriations.

27       **14-15.2-14. International adoptions.**

28       This chapter does not apply to international adoptions.

29       **SECTION 4.** A new section to chapter 44-04 of the North Dakota Century Code is created  
30 and enacted as follows:

- 1 **Fathers' adoption registry - Exempt.**
- 2 Any record maintained within the fathers' adoption registry under chapter 14-15.2 is an
- 3 exempt record.