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Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2264

Introduced by

Senator Braunberger

Representatives Conmy, Dobervich

A BILL for an Act to amend and reenact subsection 1 of section 12.1-23-09, sections 14-02-07, 14-03-01, 14-03-08, 14-05-06, 14-05-18, 14-07-01, 14-07-03, 14-07-04, 14-07-06, 14-07-07, 14-07-08, 14-07-12, 14-07-13, and 14-07-14, subsection 9 of section 14-12.2-28, subsection 4 of section 14-14.1-30, sections 14-15-03, 14-15-20, 14-18-05, 14-18-08, and 20.1-03-06, subsections 8, 28, and 31 of section 20.1-03-12, section 30.1-10-02, subdivision b of subsection 1 of section 30.1-10-04, sections 35-01-04, 47-18-04, 47-18-05, 47-18-14, and 50-25.1-10, subsection 4 of section 54-52.4-02, subsection 2 of section 57-38-31, subsection 5 of section 57-40.3-04, section 57-40.3-07, and subsection 3 of section 57-40.5-03 of the North Dakota Century Code, relating to the definition of marriage and the recognition of marital relationships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-23-09 of the North Dakota Century Code is amended and reenacted as follows:

1. It is a defense to a prosecution under this chapter that:
   a. The actor reasonably believed ~~that~~ the actor had a claim to the property or services involved which the actor was entitled to assert in the manner which forms the basis for the charge against the actor; or
   b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes ~~persons~~individuals living together as ~~husband and wife~~married individuals.

SECTION 2. AMENDMENT. Section 14-02-07 of the North Dakota Century Code is amended and reenacted as follows:

14-02-07. Force to protect.

~~Any necessary~~Necessary force may be used to protect from wrongful injury the person or property of one's self, or of a ~~wife, husband~~spouse, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

SECTION 3. AMENDMENT. Section 14-03-01 of the North Dakota Century Code is amended and reenacted as follows:

14-03-01. What constitutes marriage - Spouse defined.

Marriage is a personal relation arising out of a civil contract between ~~one man and one woman~~two individuals to which the consent of the parties is essential. The marriage relation may be entered ~~into~~, maintained, annulled, or dissolved only as provided by law. A spouse refers ~~only to a person of the opposite sex~~to an individual who is ~~a husband or a wife~~one of two individuals married to each other.

SECTION 4. AMENDMENT. Section 14-03-08 of the North Dakota Century Code is amended and reenacted as follows:

14-03-08. Foreign marriages recognized - Exception.

Except when residents of this state contract a marriage in another state which is prohibited under the laws of this state, all marriages contracted outside this state, which are valid according to the laws of the state or country where contracted, are valid in this state. ~~This section applies only to a marriage contracted in another state or country which is between one man and one woman as husband and wife.~~

SECTION 5. AMENDMENT. Section 14-05-06 of the North Dakota Century Code is amended and reenacted as follows:

14-05-06. Desertion defined.

Willful desertion is the voluntary separation of one ~~of the married parties~~spouse from the other with intent to desert:

1. Persistent refusal to have reasonable matrimonial intercourse as ~~husband and wife~~spouses when health or physical condition does not make ~~such~~the refusal reasonably necessary, or the refusal of either ~~party~~spouse to dwell in the same house with the other ~~party~~spouse when there is no just cause for ~~such~~that refusal, is desertion.

2. When one ~~party~~spouse is induced by the stratagem or fraud of the other ~~party~~spouse to leave the family dwelling place or to be absent, and during ~~such~~the absence the offending ~~party~~spouse departs with intent to desert the other, it is desertion by the ~~party~~spouse committing the stratagem or fraud and not by the other.
3. Departure or absence of one ~~party~~spouse from the family dwelling place caused by cruelty or by threats of bodily harm from which danger reasonably would be apprehended from the other is not desertion by the absent ~~party~~spouse, but it is desertion by the other ~~party~~spouse.
4. Separation by consent, with or without the understanding that one of the ~~parties~~spouses will apply for a divorce, is not desertion.
5. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during ~~such~~that absence or separation.
6. Consent to a separation is a revocable act, and if one of the ~~parties afterwards~~spouses in good faith seeks a reconciliation and restoration after the separation, but the other refuses it, ~~such~~that refusal is desertion.
7. If one ~~party~~spouse deserts the other and before the expiration of the statutory period required to make the desertion a cause of divorce returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other ~~party~~spouse refuses ~~such~~the offer and condonation, the refusal must be deemed and treated as desertion by ~~such party~~that spouse from the time of the refusal.

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

14-05-18. Presumption of domicile.

In ~~actions~~an action for divorce, the presumption of law that the domicile of ~~the husband~~one spouse is the domicile of the ~~wife~~other spouse does not apply. After separation, each ~~party~~spouse may have a separate domicile, depending ~~for proof upon~~on proof of actual residence and not ~~upon~~on legal presumptions.

SECTION 7. AMENDMENT. Section 14-07-01 of the North Dakota Century Code is amended and reenacted as follows:

14-07-01. Mutual obligations.

~~Husband and wife~~Two individuals married to each other contract toward each other obligations of mutual respect, fidelity, and support.

SECTION 8. AMENDMENT. Section 14-07-03 of the North Dakota Century Code is amended and reenacted as follows:

14-07-03. Duty to support.

~~The husband and wife~~Two individuals married to each other have a mutual duty to support each other out of their individual property and labor.

SECTION 9. AMENDMENT. Section 14-07-04 of the North Dakota Century Code is amended and reenacted as follows:

14-07-04. Separate property - Rights and privileges.

Except as otherwise provided by section 14-07-03, neither ~~the husband nor the wife~~spouse has any interest in the property of the other spouse, but neither can be excluded from the other's dwelling.

SECTION 10. AMENDMENT. Section 14-07-06 of the North Dakota Century Code is amended and reenacted as follows:

14-07-06. Contracts between ~~husband and wife~~spouses and third persons as to property.

Either ~~husband or wife~~spouse in a marital relation may enter ~~into~~ any engagement or transaction with the other spouse or with other persons respecting property which either might enter ~~into~~ if unmarried.

SECTION 11. AMENDMENT. Section 14-07-07 of the North Dakota Century Code is amended and reenacted as follows:

14-07-07. Contracts to alter marital relations.

~~A husband and wife cannot~~Two individuals married to each other may not by any contract with each other alter their marital relations, except ~~that~~ they may agree in writing to an immediate separation and ~~may~~ make provision for the support of either ~~of them~~spouse and of their children during ~~such~~the separation. The mutual consent of the parties is a sufficient consideration for ~~such a~~the separation agreement.

SECTION 12. AMENDMENT. Section 14-07-08 of the North Dakota Century Code is amended and reenacted as follows:

14-07-08. Separate and mutual rights and liabilities of ~~husband and wife~~spouses.

The separate and mutual rights and liabilities of ~~a husband and a wife~~spouses in a marital relation are as follows:

1. Neither ~~the husband nor the wife as such~~spouse is answerable for the acts of the other.
2. Except for necessary expenses as provided in subsection 3, the earnings of one spouse are not liable for the debts of the other spouse, and the earnings and accumulations of either spouse and of any minor children living with either spouse or in one spouse's custody, while the ~~husband and wife~~spouses are living separate from each other, are the separate property of each spouse.
3. Except for abandonment as provided in section 14-07-11, ~~the husband and wife are~~each spouse is liable jointly and severally for any debts contracted by either for necessary household supplies of food, clothing, and fuel~~,~~; medical care~~, and for~~, shelter for themselves and family~~,~~; and ~~for the~~ education of their minor children.
4. The separate property of ~~the husband or wife~~a spouse is not liable for the debts of the other spouse but each is liable for their own debts contracted before or after marriage.

SECTION 13. AMENDMENT. Section 14-07-12 of the North Dakota Century Code is amended and reenacted as follows:

14-07-12. Transfer of property when abandoned or imprisoned.

~~In case the husband or wife~~If a spouse abandons the other and ~~removes from~~leaves the state and is absent ~~therefrom~~from the state for one year without providing for the maintenance and support of that ~~person's~~spouse's family, or is sentenced to imprisonment either in the county jail or penitentiary for ~~the~~a period of one year or more, the district court of the county where the ~~husband or wife so abandoned or not in prison~~abandoned or unconfined spouse resides, on application by affidavit of ~~such husband or wife~~the abandoned or unconfined spouse fully setting forth the facts and supported by ~~such other~~ testimony as the court ~~may deem~~deems necessary, may authorize ~~that person~~the abandoned or unconfined spouse to manage, control, sell, or encumber the property of the ~~husband or wife~~other spouse for the support and maintenance of the family and for the purpose of paying debts contracted ~~prior to such~~before the abandonment or imprisonment. Notice of ~~such~~the proceedings must be given to the opposite party and ~~must be~~ served as a summons is served in ordinary actions.

SECTION 14. AMENDMENT. Section 14-07-13 of the North Dakota Century Code is amended and reenacted as follows:

14-07-13. Contracts made under power given by court binding on both parties.

All contracts, sales, or encumbrances made by either ~~by the husband or the wife~~spouse by virtue of the power contemplated and granted by order of the court as provided in section 14-07-12 are binding on both, and during ~~such~~the absence or imprisonment, the ~~person~~spouse acting under ~~such~~that power may sue and be sued ~~thereon~~. For all acts done, the property of both parties is liable, and execution may be levied or attachment issued ~~thereon~~on that property according to statute. ~~No~~A suit or ~~proceedings may~~proceeding may not abate or ~~in anywise~~otherwise be affected by the return or release of the ~~person confined~~confined spouse, but that ~~person~~spouse may be permitted to prosecute or defend jointly with the other.

SECTION 15. AMENDMENT. Section 14-07-14 of the North Dakota Century Code is amended and reenacted as follows:

14-07-14. When order for transfer may be set aside.

The ~~husband or wife~~spouse affected by the proceedings contemplated in sections 14-07-12 and 14-07-13 may have the order or decree of the court set aside or annulled by affidavit of ~~such~~that party, setting forth fully the facts and supported by ~~such other~~ testimony as the court ~~shall deem~~deems proper. Notice of proceedings to set aside and annul the order must be given the person in whose favor the same was granted and ~~must be~~ served as a summons is served in an ordinary action. The setting aside of the decree or order ~~in no way affects any~~does not affect an act ~~done thereunder~~taken under the decree or order.

SECTION 16. AMENDMENT. Subsection 9 of section 14-12.2-28 of the North Dakota Century Code is amended and reenacted as follows:

9. The defense of immunity based on the spousal relationship ~~of husband and wife~~ or the parent and child relationship does not apply in a proceeding under this chapter.

SECTION 17. AMENDMENT. Subsection 4 of section 14-14.1-30 of the North Dakota Century Code is amended and reenacted as follows:

4. A privilege against disclosure of communications between spouses and a defense of immunity based on the spousal relationship ~~of husband and wife~~ or parent and child relationship may not be invoked in a proceeding under sections 14-14.1-22 through 14-14.1-37.

SECTION 18. AMENDMENT. Section 14-15-03 of the North Dakota Century Code is amended and reenacted as follows:

14-15-03. Who may adopt.

The following individuals may adopt:

1. ~~A husband and wife~~Two married individuals together although one or both are minors.
2. An unmarried adult.
3. The unmarried father or mother of the individual to be adopted.
4. A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not the adopting ~~person's~~individual's spouse, and if:
   a. The petitioner is a stepparent of the individual to be adopted and the biological or legal parent of the individual to be adopted consents;
   b. The petitioner and the other spouse are legally separated; or
   c. The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

SECTION 19. AMENDMENT. Section 14-15-20 of the North Dakota Century Code is amended and reenacted as follows:

14-15-20. Adoption and legitimation by conduct.

Notwithstanding the other provisions of this chapter, the biological father of an illegitimate minor adopts and legitimates a minor by publicly acknowledging the minor as that man's child, receiving the minor into that man's home, with the consent of that man's ~~wife~~spouse, if that man is married, and otherwise treating the minor as if the minor were legitimate. Thereafter, the minor is deemed the legitimate child of the father for all purposes from the time of birth of the minor, the same as if the adoption had been finally decreed pursuant to this chapter.

SECTION 20. 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~~spouse, if

a party to the agreement, is ~~the father~~a parent of the child. If the surrogate's ~~husband~~spouse is not a party to the agreement or the surrogate is unmarried, paternity of the child is governed by chapter 14-20.

SECTION 21. AMENDMENT. Section 14-18-08 of the North Dakota Century Code is amended and reenacted as follows:

14-18-08. 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~~spouse, if any.

SECTION 22. AMENDMENT. Section 20.1-03-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-06. Contents of resident general game, fur-bearer, or fishing licenses - Licenses not transferable - Resident family fishing license.

1. A resident general game, fur-bearer, or fishing license is not transferable. Each ~~such~~ license ~~shall~~must:
   ~~1.~~ a. Describe the licensee.
   ~~2.~~ b. Designate the licensee's place of residence.
   ~~3.~~ c. Have printed upon it in large figures the year for which it is issued, or if it is a fur-bearer license, the statement that it expires on the first day of September following the date of issue.
   ~~4.~~ d. Have printed upon it in large letters the word "nontransferable".
   ~~5.~~ e. Be issued in the name of the director.
2. In addition to the regular resident fishing license, ~~there is hereby authorized~~ a resident family fishing license ~~allowing the husband and wife of a family~~may be issued which allows two individuals married to each other to fish under one license. ~~Such~~A family fishing license ~~shall be~~is valid for the same period as other resident fishing licenses and shall be issued in duplicate. ~~The husband and wife are each to~~Each spouse shall have a copy in possession while fishing.

SECTION 23. AMENDMENT. Subsections 8, 28, and 31 of section 20.1-03-12 of the North Dakota Century Code are amended and reenacted as follows:

8. For a resident ~~husband and wife~~ fishing license for two individuals married to each other, twenty-two dollars.

28. For a resident ~~husband and wife~~ frog license for two individuals married to each other, five dollars.

31. For a nonresident ~~husband and wife~~ fishing license for two individuals married to each other, sixty dollars.

SECTION 24. AMENDMENT. Section 30.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10-02. (2-802) Effect of divorce, annulment, and decree of separation.

1. An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the spouse is married to the decedent at the time of death. A decree of separation that does not terminate the marital status of ~~husband and wife~~the spouses is not a divorce for purposes of this section.
2. For purposes of chapters 30.1-04 through 30.1-07 and section 30.1-13-03, a surviving spouse does not include:
   a. An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently ~~that~~they participate in a marriage ceremony purporting to marry each to the other or live together as ~~husband and wife~~married individuals;
   b. An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or
   c. An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

SECTION 25. AMENDMENT. Subdivision b of subsection 1 of section 30.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

b. "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 30.1-10-02. A decree of separation that does not terminate the marital status of ~~husband and wife~~the spouses is not a divorce for purposes of this section.

SECTION 26. AMENDMENT. Section 35-01-04 of the North Dakota Century Code is amended and reenacted as follows:

35-01-04. Creation of lien by contract or by operation of law - Special circumstances and exception.

1. A lien or security interest is created by contract or by operation of law. ~~No lien arises~~A lien does not arise by operation of law until the time at which the act secured by the lien is to be performed.
2. A security interest in personal property is governed by chapter 41-09, except that a bill of sale or security agreement, that is not a purchase money security interest, with respect to household goods, effects, furniture of individuals married ~~persons~~to each other, or personal property exempt from execution is void unless the instrument by which it is transferred or encumbered is jointly executed by ~~the husband and wife~~ individuals married to each other, if both are living.
3. This section does not apply to transfers or liens arising by operation of law nor to security agreements relating to threshed grains made with any lending agency authorized to make commodity credit corporation loans on threshed grains.

SECTION 27. AMENDMENT. Section 47-18-04 of the North Dakota Century Code is amended and reenacted as follows:

47-18-04. When homestead subject to execution.

A homestead is subject to execution or forced sale in satisfaction of judgments obtained in the following cases:

1. On debts secured by mechanics', construction, or laborers' liens for work or labor done or performed or material furnished exclusively for the improvement of the same.
2. On debts secured by mortgage on the premises executed and acknowledged by both ~~husband and wife~~parties to a marriage, or an unmarried claimant.
3. On debts created for the purchase ~~thereof~~of the homestead and for all taxes accruing and levied ~~thereon~~on the homestead.
4. On all other debts when, upon an appraisal as provided by section 47-18-06, it appears ~~that~~ the value of the homestead is more than one hundred fifty thousand dollars over and above liens or encumbrances on the homestead, and then only to the

extent of any value in excess of the sum total of the liens and encumbrances plus said one hundred fifty thousand dollars.

SECTION 28. AMENDMENT. Section 47-18-05 of the North Dakota Century Code is amended and reenacted as follows:

47-18-05. Homestead - How conveyed.

The homestead of a married ~~person~~individual, without regard to the value ~~thereof~~of the homestead, ~~cannot~~may not be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both ~~the husband and wife~~parties to a marriage.

SECTION 29. AMENDMENT. Section 47-18-14 of the North Dakota Century Code is amended and reenacted as follows:

47-18-14. Proceeds of sale exempt - Disposition.

If the sale of a homestead is made as provided in section 47-18-13, the proceeds ~~thereof~~of the sale to the amount of the homestead exemption must be paid to the claimant and the residue applied to the satisfaction of the execution. When the execution is against a married claimant whose spouse is living, the court may direct that the one hundred fifty thousand dollars be deposited in court to be paid ~~out~~ only on the joint receipt of ~~the husband and wife~~both spouses, and it shall possess all the protection against legal process and voluntary disposition by either spouse as did the original homestead premises whether paid directly to the claimant or to ~~the husband and wife~~both spouses jointly.

SECTION 30. AMENDMENT. Section 50-25.1-10 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-10. Abrogation of privileged communications.

Any privilege of communication between ~~husband and wife~~two individuals married to each other or between any professional person and the person's patient or client, except between attorney and client, is abrogated and does not constitute grounds for preventing a report to be made or for excluding evidence in any proceeding regarding child abuse, neglect, or death resulting from abuse or neglect resulting from a report made under this chapter.

SECTION 31. AMENDMENT. Subsection 4 of section 54-52.4-02 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~In any case in which a husband and wife~~If two individuals married to each other are each entitled to family leave under this chapter and are employed by the same employer, the aggregate period of family leave to which both are entitled may be limited by the employer to twelve workweeks during any twelve-month period.

SECTION 32. AMENDMENT. Subsection 2 of section 57-38-31 of the North Dakota Century Code is amended and reenacted as follows:

2. The same filing status and deduction method used by ~~a husband and wife~~two individuals married to each other when filing federal income tax returns must be used when filing state income tax returns.

SECTION 33. AMENDMENT. Subsection 5 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

5. a. A motor vehicle acquired by inheritance from, by bequest of, or operation of a trust created by a decedent who owned it;

b. The transfer of a motor vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee;

c. The transfer of a motor vehicle by way of gift between ~~a husband and wife~~two individuals married to each other, parent and child, grandparent and grandchild, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships;

d. The transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed;

e. The transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization in which the ownership of the reorganized business remains in the same person or persons as before the reorganization, if the title transfer is completed within one hundred eighty days from the effective date of the reorganization;

f. The transfer of a motor vehicle previously transferred under subdivision e which returns ownership to the previous owner; and

g. The transfer of a motor vehicle without monetary consideration from a revocable living trust to the trustor or to the spouse, child, or sibling of the trustor.

SECTION 34. AMENDMENT. Section 57-40.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-07. Title or license registration not to be issued unless tax paid.

~~No title or license registration shall be issued by the~~The director of the department of transportation may not issue a title or license registration for the ownership or operation of ~~any~~a motor vehicle to ~~any~~an applicant for title or license registration unless the tax imposed by this chapter ~~shall be~~is paid by the applicant to the director of the department of transportation except:

1. For those vehicles ~~which~~that have been previously licensed and the applicant for license registration is the same person in whose name the license registration had previously been issued.
2. For those vehicles transferred by way of gift between ~~a husband and wife~~two individuals married to each other, parent and child, or brothers and sisters.
3. For those vehicles ~~which~~that have been previously licensed and the applicant for license registration is the same business organization to which the license registration had been issued but the name of which has been changed through incorporation or other reorganization in business structure but the ownership of which remains in the same person or persons as ~~prior to~~before the reorganization.
4. For vehicles ~~which~~that have been previously licensed and are transferred between a member of a general or limited partnership and the partnership at the time the partnership is established or terminated, between a stockholder of a corporation and the corporation at the time the corporation is organized or liquidated, or between a member of a limited liability company and the limited liability company at the time the limited liability company is organized or terminated.
5. For a vehicle leased and registered or licensed in another state by a nonresident individual who is stationed as a member of the armed services of the United States in this state, the vehicle is exempt from tax imposed under this chapter and registration

in this state must be issued upon application and payment of appropriate registration fees.

SECTION 35. AMENDMENT. Subsection 3 of section 57-40.5-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Aircraft ~~which~~that were previously titled or registered in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more of the joint tenants; the transfer of aircraft by gift, inheritance, or devise between ~~a husband and wife~~two individuals married to each other, parent and child, or brothers and sisters; and the transfer of aircraft to reflect a new name of the owner caused by a business reorganization, if the ownership of the business organization remains in the same person or persons as ~~prior to~~before the reorganization.