

SENATE BILL NO. 2312

Introduced by

Senator Kelsh

Representative Gulleason

1 A BILL for an Act to amend and reenact subsection 2 of section 14-09-08.5, section 14-09-08.6,
2 subsection 2 of section 14-09-08.8, subsection 1 of section 14-09-09.7, and section
3 14-09-09.10 of the North Dakota Century Code, relating to child support guidelines and
4 obligees and obligors.

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

6 **SECTION 1. AMENDMENT.** Subsection 2 of section 14-09-08.5 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 2. The notice ~~to the obligor~~ must inform the obligor of the duty to furnish the
9 information required by section 14-09-08.6 and that a failure to furnish the required
10 information may result in the entry of an order compelling the furnishing of the
11 information. The notice must also inform the obligor and obligee that the review
12 determination will be mailed to the obligor and obligee following the review. The
13 notice must be accompanied by an income report form, together with instructions
14 for the accurate completion of the income report form.

15 **SECTION 2. AMENDMENT.** Section 14-09-08.6 of the 1999 Supplement to the North
16 Dakota Century Code is amended and reenacted as follows:

17 **14-09-08.6. Obligor's duties upon review - Failure to provide information.**

18 1. The obligor and obligee shall provide information to the child support agency
19 concerning ~~the obligor's~~ income, which is sufficient to accomplish the review, no
20 later than five working days before the date of review. The information must be
21 furnished by providing an income report, in the form and manner required by the
22 public authority, accurately completed and attested to by the obligor and obligee,
23 earnings statements secured from the obligor's and obligee's current income payer

- 1 if the obligor or obligee changed employment after the end of the latest income tax
2 year for which the obligor or obligee filed a return, and providing:
- 3 a. A verified copy of the latest income tax return, filed with the internal revenue
4 service or any state official administering a state income tax, which accurately
5 reports the obligor's and obligee's income for a fiscal year ending no more
6 than seventeen months prior to the date of the review; or
- 7 b. A written authorization by which the child support agency may secure a
8 verified copy of the latest income tax return, filed with the tax commissioner,
9 which accurately reports the obligor's or obligee's income for a fiscal year
10 ending no more than seventeen months prior to the date of review.
- 11 2. If the obligor or obligee has not produced information under subsection 1
12 concerning ~~the obligor's~~ income, which is sufficient to accomplish the review, the
13 child support agency may base its review determination on the assumption that the
14 ~~obligor's~~ income has increased at the rate of ten percent per year since the child
15 support order under review was entered or last modified.

16 **SECTION 3. AMENDMENT.** Subsection 2 of section 14-09-08.8 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 2. The court may determine the motion based upon the files, records, and evidence
19 received in consideration of the motion. If the child support agency certifies that,
20 despite diligent efforts to secure reliable information concerning the obligor's or
21 obligee's income, the obligor or obligee has not produced such information, and if
22 the obligor or obligee provides the court with no reliable evidence concerning the
23 obligor's or obligee's income, it is presumed that the obligor's or obligee's income
24 has increased at the rate of ten percent per year since the child support order was
25 entered or last modified.

26 **SECTION 4. AMENDMENT.** Subsection 1 of section 14-09-09.7 of the 1999
27 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 28 1. The department of human services shall establish child support guidelines to assist
29 courts in determining the amount a parent should be expected to contribute toward
30 the support of the child under this section. The guidelines must:

- 1 a. Consider the income of both parents, using an income shares child support
2 guidelines model.
- 3 b. Include consideration of gross income. For purposes of the guidelines, gross
4 income does not include an employee benefit over which the employee does
5 not have significant influence or control over the nature or amount unless:
6 (1) That benefit may be liquidated; and
7 (2) Liquidation of that benefit does not result in the employee incurring an
8 income tax penalty.
- 9 ~~b.~~ c. Authorize an expense deduction for determining net income.
- 10 ~~e.~~ d. Designate other available resources to be considered.
- 11 ~~e.~~ e. Specify the circumstances that should be considered in reducing support
12 contributions on the basis of hardship.
- 13 ~~e.~~ f. Include consideration of extended periods of time a minor child spends with
14 the child's obligor parent.
- 15 g. Include consideration of temporary periods of increased or decreased income
16 which occur due to circumstances beyond the control of the obligor or obligee.

17 **SECTION 5. AMENDMENT.** Section 14-09-09.10 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **14-09-09.10. Definitions.** For the purposes of this chapter, unless the context or
20 subject matter otherwise requires:

- 21 1. "Business day" means every day that is not a Saturday or legal holiday.
- 22 2. "Child support" means payments for the support of children and combined
23 payments for the support of children and spouses or former spouses, however
24 denominated, if the payment is required by the order of a court or other
25 governmental agency having authority to issue such orders.
- 26 3. "Child support agency" means the county social service board, any combination of
27 county social service boards, or any entity created by a county social service board
28 or any combination of county social service boards, in execution of the county
29 social service board's duties under subsection 5 of section 50-09-03.
- 30 4. "Delinquent" means a situation which occurs on the first working day after the day
31 upon which a child support payment was identified as due and unpaid, and the

- 1 total amount of unpaid child support is at least equal to the amount of child support
2 payable in one month.
- 3 5. "Disposable income" means gross income less deductions required by law for
4 taxes and social security.
- 5 6. "Employer" means income payor.
- 6 7. "Health insurance" includes fees for service, health maintenance organization,
7 preferred provider organization, comprehensive health association plan, accident
8 and health insurance policies, group health plans as defined in section 607(1) of
9 the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat.
10 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical
11 coverage may be provided in a policy, plan, or contract which may legally be sold
12 or provided in this state.
- 13 8. "Income" means any form of payment, regardless of source, owed to an obligor or
14 obligee, including any earned, unearned, taxable or nontaxable income, workers'
15 compensation, disability benefits, unemployment compensation benefits, annuity
16 and retirement benefits, but excluding public assistance benefits administered
17 under state law.
- 18 9. "Income payor" means any person, partnership, firm, corporation, limited liability
19 company, association, political subdivision, or department or agency of the state or
20 federal government owing income to an obligor ~~and~~ or an obligee. The term
21 includes an obligor or obligee if the obligor or obligee is self-employed.
- 22 10. "Obligee" means a person including a state or political subdivision to whom a duty
23 of support is owed.
- 24 11. "Obligor" means any person owing a duty of support.
- 25 12. "Past-due support" means child support that is not paid by the earlier of:
26 a. The date a court order or an order of an administrative process established
27 under state law requires payment to be made; or
28 b. The last day of the month or other period the payment was intended to cover.
- 29 13. "Payday" means the day upon which the income payor pays or otherwise credits
30 the obligor or obligee.

- 1 14. "Public authority" means the department of human services in execution of its
2 duties pursuant to the state plan submitted under chapter 50-09 in conformance
3 with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C.
4 651 et seq.].
- 5 15. "System implementation date" means the date the public authority certifies to the
6 secretary of state and the legislative council that the statewide automated data
7 processing system, established under section 50-09-02.1, is operating.