

HOUSE BILL NO. 1172

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 13-05, two new subsections to
2 section 14-09-25, a new subsection to section 15-39.1-30, a new subsection to section
3 39-03.1-28, a new section to chapter 50-06.3, and a new subsection to section 54-52-26 of the
4 North Dakota Century Code, relating to judgment interest and the collection and disbursement
5 of child support; to amend and reenact subsection 3 of section 14-09-08.1, section 14-09-08.15,
6 subsection 5 of section 14-09-09.3, subsection 5 of section 14-09-25, section 28-20-34,
7 subsection 1 of section 28-22-19, and sections 34-15-06, 50-09-08.5, and 50-09-33 of the North
8 Dakota Century Code, relating to judgment interest, reporting of new hires, enforcement of
9 medical support, and the collection and disbursement of child support; to provide a continuing
10 appropriation; and to provide an effective date.

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

12 **SECTION 1.** A new section to chapter 13-05 of the North Dakota Century Code is
13 created and enacted as follows:

14 **Child support collection agencies.**

- 15 1. A collection agency attempting in any manner to collect child support as defined in
16 section 14-09-09.10 must be licensed under this chapter if either the child support
17 debtor or creditor reside within this state, if the child support debt arises under an
18 order issued by a court of this state, or if a record of the child support debt is being
19 maintained on the statewide automated data processing system under section
20 50-09-02.1.
- 21 2. A collection agency licensed under this section may not:
- 22 a. Impose a fee or charge for any child support collected primarily through the
23 efforts of a governmental agency;
- 24 b. Impose a fee or charge for collection of a current child support payment;

- 1 c. Designate a current child support payment as past-due support or other
2 amount owed; or
- 3 d. Impose a fee or charge that exceeds twenty-five percent of the amount of
4 past-due support collected by the collection agency.
- 5 3. If the child support debt arises under an order issued by a court of this state, or if a
6 record of the child support debt is being maintained on the statewide automated
7 data processing system under section 50-09-02.1, all child support payments
8 collected by a collection agency must be paid to the department of human services
9 within five business days for disbursement under section 14-09-25. Child support
10 payments disbursed under section 14-09-25 may not be redirected to a collection
11 agency unless specifically permitted by rules adopted by the department of human
12 services.
- 13 4. A collection agency failing to pay child support payments to the department of
14 human services as required in this section is liable to the obligor for three times the
15 amount improperly withheld by the collection agency or five hundred dollars,
16 whichever is greater, in addition to any other remedy or damages permitted by law.
17 The department of human services is not required to give credit for payments
18 withheld by a collection agency in violation of this section.
- 19 5. Any person contracting for services with a collection agency for the collection of
20 child support may cancel the contract without a fee or charge upon thirty days'
21 written notice.

22 **SECTION 2. AMENDMENT.** Subsection 3 of section 14-09-08.1 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 3. Whenever there is failure to make the payments as required, the clerk of court
25 may, and upon request of the obligee or child support agency, shall send notice of
26 the arrears by first-class mail, with affidavit of service, to the person required to
27 make the payments, or request a district judge of the judicial district to issue a
28 citation for contempt of court against the person who has failed to make the
29 payments ~~and the.~~ The citation must may be served on that person as provided
30 ~~by the North Dakota Rules of Civil Procedure. The clerk of court may delay~~
31 ~~sending a notice of arrears or request for a citation for contempt of court under this~~

1 ~~section if a notice has been mailed to the obligor under section 50-09-08.6 by~~
2 ~~first-class mail with affidavit of service to the person's last-known address.~~

3 **SECTION 3. AMENDMENT.** Section 14-09-08.15 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **14-09-08.15. Reasonable cost of health insurance.** For purposes of this chapter,
6 health insurance is considered reasonable in cost if it is available to the obligor on a group
7 basis or through an employer or union, regardless of service delivery mechanism, or as
8 otherwise defined by the public authority in compliance with rules promulgated by the secretary
9 of the United States department of health and human services.

10 **SECTION 4. AMENDMENT.** Subsection 5 of section 14-09-09.3 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 5. Any contempt proceeding against an income payer under this section must be
13 commenced within one ~~hundred eighty days~~ year after the income payer's act or
14 failure to act upon which such proceeding is based.

15 **SECTION 5. AMENDMENT.** Subsection 5 of section 14-09-25 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 5. The state disbursement unit shall deposit all child support payments received in the
18 state treasury. All payments so deposited, except those payments assigned to the
19 state, are appropriated to the public authority as a standing and continuing
20 appropriation for the purpose of making disbursements to obligees entitled to the
21 child support payments collected. If the public authority is not able to locate the
22 obligee for three years after the date it receives a child support payment, the
23 payment may be retained by the public authority on behalf of the state as
24 compensation for its disbursement efforts and is appropriated on a continuing basis
25 to the public authority to promote public awareness of the consequences of
26 out-of-wedlock births and the cost of supporting minor children.

27 **SECTION 6.** Two new subsections to section 14-09-25 of the North Dakota Century
28 Code are created and enacted as follows:

29 The public authority may suspend or waive judgment interest on an arrearage as
30 part of an amnesty program as an incentive for satisfying a child support obligation
31 or complying with a payment plan or if the public authority determines that the

1 judgment interest is not collectible through commercially reasonable efforts. This
2 subsection applies to judgment interest accruing before the effective date of this
3 Act only if the arrearage is assigned to the public authority under section
4 50-09-06.1 or 50-24.1-02.1 or if the obligee provides written consent. Any
5 judgment interest that is suspended or waived under this subsection may be
6 reinstated by a court at any time or by the public authority if the obligor has failed to
7 comply with a payment plan.

8 9. If an obligee is deceased, any past-due child support that is received must be
9 disbursed in the following order:

10 a. As specifically provided in a court order in the event of the obligee's death;

11 b. To the obligee's estate or as provided in the obligee's will;

12 c. To the child or children on whose behalf the payments were made if the child
13 or children are all eighteen years of age or older; or

14 d. As directed by the court if one or more of the children to whom the child
15 support is owed are under eighteen years old.

16 **SECTION 7.** A new subsection to section 15-39.1-30 of the North Dakota Century Code
17 is created and enacted as follows:

18 A government child support enforcement agency for purposes of establishing
19 paternity or establishing, modifying, or enforcing a child support obligation of the
20 member.

21 **SECTION 8. AMENDMENT.** Section 28-20-34 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **28-20-34. Interest rate on judgments.** Interest is payable on judgments recovered in
24 the courts of this state at the same rate as is provided in the original instrument upon which the
25 action resulting in the judgment is based, which rate may not exceed the maximum rate
26 provided in section 47-14-09. If such original instrument contains no provision as to an interest
27 rate, or if the action resulting in the judgment was not based upon an instrument, interest is
28 payable at the variable rate of ~~twelve~~ four percent above the Bank of North Dakota prime
29 interest rate per annum in effect on the first business day of July of every odd-numbered year
30 and may not be compounded in any manner or form. Interest Except as otherwise provided in
31 this section, interest on all judgments ~~recovered~~ entered in the courts of this state before July 1,

1 ~~1984~~ 2005, must remain at the rate per annum which was legally prescribed at the time the
2 judgments were entered, and such interest may not be compounded in any manner or form.
3 Interest on unpaid child support obligations must be calculated under section 14-09-25
4 according to the rate currently in effect under this section regardless of the date the obligations
5 first became due and unpaid.

6 **SECTION 9. AMENDMENT.** Subsection 1 of section 28-22-19 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 1. All pensions or annuities or retirement, disability, death, or other benefits paid or
9 payable by, or amounts received as a return of contributions and interest from, a
10 retirement system established pursuant to state law by the state except as
11 provided by sections 15-39.1-12.2, 39-03.1-14.2, 54-52-17.6, and 54-52.2-03.3, a
12 state agency, a political subdivision of the state, or a firefighters relief association
13 for retirement, annuity, pension, disability benefit, or death benefit purposes. The
14 exemption in this subsection does not apply to the collection of child support unless
15 federal law requires an exemption or if complying with an execution or other
16 process would require an actuarial analysis to determine the current value of the
17 amounts that are payable to the debtor.

18 **SECTION 10. AMENDMENT.** Section 34-15-06 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **34-15-06. Recovery of civil money penalties.** A civil money penalty assessed under
21 this chapter is payable fifteen days after service on the employer, by first-class mail, of notice of
22 imposition of the civil money penalty. If an order for child support was issued by a court in this
23 state, failure to pay a civil money penalty may be punished as a ~~civil~~ contempt of court by the
24 court that issued an order for child support imposed upon a newly hired employee whose hiring
25 was not reported timely, completely, and correctly. If an order for child support was issued by a
26 court or administrative tribunal in another state or if there is no current order for child support for
27 the employee, failure to pay a civil money penalty may be punished as a ~~civil~~ contempt of court
28 by any court of this state with jurisdiction over the employer.

29 **SECTION 11.** A new subsection to section 39-03.1-28 of the North Dakota Century
30 Code is created and enacted as follows:

1 A government child support enforcement agency for purposes of establishing
2 paternity or establishing, modifying, or enforcing a child support obligation of the
3 member.

4 **SECTION 12.** A new section to chapter 50-06.3 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Revolving fund for repayment of uncollectible debts - Continuing appropriation.**

7 There is created in the state treasury a revolving fund of twenty-five thousand dollars. Earnings
8 of the Bank of North Dakota must be transferred to create and maintain the fund. All moneys in
9 the fund are appropriated on a continuing basis to the department for the purpose of
10 reimbursing the department for reducing or writing off overpayments and disbursements made
11 in error under section 14-09-25 which the department determines cannot be collected through
12 commercially reasonable efforts. A debt that is reduced or written off under this section is not
13 forgiven and may be collected by the department. Any funds collected on the portion of a debt
14 that has been reduced or written off under this section must be transferred by the department to
15 the Bank of North Dakota.

16 **SECTION 13. AMENDMENT.** Section 50-09-08.5 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **50-09-08.5. Securing assets to satisfy child support.** In acting as the official agency
19 of the state in administering the child support program under title IV-D, in cases in which there
20 is past-due child support, the state agency may secure assets to satisfy any current support
21 obligation and the past-due amount by issuing writs of execution under chapter 28-21 or
22 domestic relations orders that comply with federal law regarding pensions. Those writs of
23 execution or domestic relations orders may be used to secure or seize property including:

- 24 1. Periodic or lump sum payments from:
- 25 a. An agency administering unemployment compensation benefits, workforce
26 safety and insurance benefits, or other benefits; and
- 27 b. Judgments, settlements, and gaming proceeds otherwise belonging to the
28 obligor, or payable upon the obligor's demand;
- 29 2. Assets of the obligor held in financial institutions; and
- 30 3. Public and private retirement funds.

1 **SECTION 14. AMENDMENT.** Section 50-09-33 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-09-33. (~~Effective through June 30, 2005~~) Continuing appropriation -**
4 **Cooperative agreements for child support enforcement services.** All federal funds and
5 other income generated by the state agency under a cooperative agreement with one or more
6 county child support agencies for centralized administration of child support enforcement
7 services, or with an Indian tribe for child support enforcement services, is appropriated on a
8 continuing basis for the sole purpose of hiring additional staff and payment of other expenses
9 as necessary to carry out the state agency's duties under the agreements.

10 **SECTION 15.** A new subsection to section 54-52-26 of the North Dakota Century Code
11 is created and enacted as follows:

12 A government child support enforcement agency for purposes of establishing
13 paternity or establishing, modifying, or enforcing a child support obligation of the
14 member.