

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

HOUSE BILL NO. 1172
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 13-05, two new subsections to section 14-09-25, a new subsection to section 15-39.1-30, a new subsection to section 39-03.1-28, three new sections to chapter 50-09, and a new subsection to section 54-52-26 of the North Dakota Century Code, relating to judgment interest and the collection and disbursement of child support; to amend and reenact subsection 3 of section 14-09-08.1, section 14-09-08.15, subsection 5 of section 14-09-09.3, section 14-09-09.10, subsections 1 and 2 of section 28-21-05.2, subsection 1 of section 28-22-19, sections 34-15-06, 35-34-02, 35-34-05, 35-34-09, and 50-09-08.5, subsection 2 of section 50-09-08.6, subsection 1 of section 50-09-32, and section 50-09-33 of the North Dakota Century Code, relating to reporting of new hires, account liens, enforcement of medical support, and the collection and disbursement of child support; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Child support collection agencies.

1. Notwithstanding section 13-05-02, a collection agency attempting in any manner to collect child support as defined in section 14-09-09.10 must be licensed under this chapter if either the child support debtor or creditor reside within this state, if the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1.
2. A collection agency licensed under this section may not:
 - a. Impose a fee or charge for any child support collected primarily through the efforts of a governmental agency;
 - b. Impose a fee or charge for collection of a current child support payment; or
 - c. Designate a current child support payment as past-due support or other amount owed.
3. If the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1, all child support payments collected by a collection agency must be paid to the department of human services within five business days for disbursement under section 14-09-25. Child support payments disbursed under section 14-09-25 may not be redirected to a collection agency unless specifically permitted by rules adopted by the department of human services.
4. A collection agency failing to pay child support payments to the department of human services as required in this section is liable to the obligor for three times the amount improperly withheld by the collection agency or five hundred dollars, whichever is greater, in addition to any other remedy or damages permitted by law. The department of human

services is not required to give credit for payments withheld by a collection agency in violation of this section.

5. Any person contracting for services with a collection agency for the collection of child support may cancel the contract without a fee or charge upon thirty days' written notice.

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

3. Whenever there is failure to make the payments as required, the clerk of court may, and upon request of the obligee or child support agency, shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district to issue a citation for contempt of court against the person who has failed to make the payments and the. The citation must may be served on that person as provided by the North Dakota Rules of Civil Procedure. The clerk of court may delay sending a notice of arrears or request for a citation for contempt of court under this section if a notice has been mailed to the obligor under section 50-09-08.6 by first-class mail with affidavit of service to the person's last-known address.

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

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

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

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

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

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

1. "Arrears registry" means the registry maintained under section 16 of this Act.
2. "Business day" means every day that is not a Saturday or legal holiday.
2. 3. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
3. 4. "Child support agency" means the county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards, in execution of the county social service board's duties under subsection 5 of section 50-09-03.
4. 5. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.

- ~~5~~. 6. "Disposable income" means gross income less deductions required by law for taxes and social security.
- ~~6~~. 7. "Employer" means income payer.
- ~~7~~. 8. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.
- ~~8~~. 9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
- ~~9~~. 10. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.
- ~~40~~. 12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
- ~~44~~. 13. "Obligor" means any person owing a duty of support.
- ~~42~~. 14. "Past-due support" means child support that is not paid by the earlier of:
- a. The date a court order or an order of an administrative process established under state law requires payment to be made; or
 - b. The last day of the month or other period the payment was intended to cover.
- ~~43~~. 15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.
- ~~44~~. 16. "Public authority" means the department of human services in execution of its duties pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
- ~~45~~. 17. "System implementation date" means the date the public authority certifies to the secretary of state and the legislative council that the statewide automated data processing system, established under section 50-09-02.1, is operating.

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

The public authority may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the public authority determines that the judgment interest is not

collectible through commercially reasonable efforts. This subsection applies to judgment interest accruing before the effective date of this Act only if the arrearage is assigned to the public authority under section 50-09-06.1 or 50-24.1-02.1 or if the obligee provides written consent. Any judgment interest that is suspended or waived under this subsection may be reinstated by a court at any time or by the public authority if the obligor has failed to comply with a payment plan.

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

- a. As specifically provided in a court order in the event of the obligee's death;
- b. To the obligee's estate or as provided in the obligee's will;
- c. To the child or children on whose behalf the payments were made if the child or children are all eighteen years of age or older; or
- d. As directed by the court if one or more of the children to whom the child support is owed is under eighteen years old.

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

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

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is not current in a court established plan to repay the unpaid child support judgment is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.~~
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may omit:
 - a. ~~The seal of the court;~~
 - b. ~~The subscription of the clerk of that court;~~
 - c. ~~The attestation in the name of the judge of the court that entered the judgment;~~
 - d. ~~A statement of the courts and counties to which the judgment has been transcribed; and~~
 - e. ~~If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 which has been certified under section 14-08.1-08.~~

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

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

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

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

SECTION 11. AMENDMENT. Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

35-34-02. Lien for past-due child support. ~~When a past-due child support obligation is at least six times the monthly child support obligation and the an obligor is not current in a court established plan to repay the past-due support listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.~~

SECTION 12. AMENDMENT. Section 35-34-05 of the North Dakota Century Code is amended and reenacted as follows:

35-34-05. Account lien.

1. In the case of an account maintained in a financial institution, the public authority may establish a lien on the account by serving a notice of lien upon the financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the financial institution. The notice must be in a form prescribed by the public authority and contain the name, social security number, or other taxpayer identification number and last-known address of the obligor, the amount of past-due support for which a lien is claimed, and any other information required by the public authority. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon service of the notice of lien on a financial institution in accordance with this section, the lien attaches to accounts of the obligor maintained in the financial institution, ~~except to the extent necessary to~~ and freezes all subsequent withdrawals from the account except for funds in excess of the amount of past-due support for which a lien is claimed under this section and as provided in subsection 3.

3. Notwithstanding a freeze on an account under subsection 2, the financial institution may satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with notice of lien, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with notice of lien.
3. 4. A lien under this section is perfected when the financial institution is served with notice of the lien.

SECTION 13. AMENDMENT. Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

35-34-09. Immunity from liability. A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property ~~or discharges the obligation to the public authority,~~ complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, is immune from suit or any liability ~~to the obligor or other person arising from the surrender or payment under any federal or state law.~~ The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.

SECTION 14. A new subsection to section 39-03.1-28 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 15. AMENDMENT. Section 50-09-08.5 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 16. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support arrears registry. The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrears registry" means the registry maintained under this section.

SECTION 17. AMENDMENT. Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
 - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
 - b. An obligor who is ~~in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less~~ listed on the arrears registry; or
 - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.

SECTION 18. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support deduction order.

1. The state agency, directly or through agents or child support agencies, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.
2. The state agency, directly or through agents or child support agencies, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.
4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.
5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with the order.
6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.
7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section.

SECTION 19. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Protest period. Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 or section 18 of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

SECTION 20. AMENDMENT. Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than ~~twenty-five~~ ten thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person.

SECTION 21. AMENDMENT. Section 50-09-33 of the North Dakota Century Code is amended and reenacted as follows:

50-09-33. (Effective through June 30, 2005 2007) Continuing appropriation - Cooperative agreements for child support enforcement services. All federal funds and other income generated by the state agency under a cooperative agreement with one or more county child support agencies for centralized administration of child support enforcement services, or with an Indian tribe for child support enforcement services, is appropriated on a continuing basis for the sole purpose of hiring additional staff and payment of other expenses as necessary to carry out the state agency's duties under the agreements.

SECTION 22. A new subsection to section 54-52-26 of the North Dakota Century Code is created and enacted as follows:

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

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. 1172.

House Vote: Yeas 85 Nays 3 Absent 6

Senate Vote: Yeas 45 Nays 1 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