

Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1173

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact three new subsections to section 35-34-01 and two new
2 sections to chapter 50-09 of the North Dakota Century Code, relating to collection of child
3 support; and to amend and reenact section 14-09-09.10, subsection 1 of section 14-09-09.34,
4 sections 28-21-05.2, 35-34-02, 35-34-05, 35-34-08, 35-34-09, 35-34-10, and 35-34-12,
5 subsection 2 of section 50-09-08.6, and subsection 1 of section 50-09-32 of the North Dakota
6 Century Code, relating to collection of child support.

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 **SECTION 1. AMENDMENT.** Section 14-09-09.10 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **14-09-09.10. Definitions.** For the purposes of this chapter, unless the context or
11 subject matter otherwise requires:

12 1. "Arrears registry" means the registry maintained under section 11 of this Act.

13 2. "Business day" means every day that is not a Saturday or legal holiday.

14 ~~2.~~ 3. "Child support" means payments for the support of children and combined
15 payments for the support of children and spouses or former spouses, however
16 denominated, if the payment is required by the order of a court or other
17 governmental agency having authority to issue such orders.

18 ~~3.~~ 4. "Child support agency" means the department of human services in execution of
19 its duties pursuant to the state plan submitted under chapter 50-09 in conformance
20 with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C.
21 651 et seq.], the county social service board, any combination of county social
22 service boards, or any entity created by a county social service board or any
23 combination of county social service boards, in execution of the county social
24 service board's duties under subsection 5 of section 50-09-03.

1 ~~4.~~ 5. "Delinquent" means a situation which occurs on the first working day after the day
2 upon which a child support payment was identified as due and unpaid, and the
3 total amount of unpaid child support is at least equal to the amount of child support
4 payable in one month.

5 ~~5.~~ 6. "Disposable income" means gross income less deductions required by law for
6 taxes and social security.

7 ~~6.~~ 7. "Employer" means income payer.

8 ~~7.~~ 8. "Health insurance" includes fees for service, health maintenance organization,
9 preferred provider organization, comprehensive health association plan, accident
10 and health insurance policies, group health plans as defined in section 607(1) of
11 the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat.
12 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical
13 coverage may be provided in a policy, plan, or contract which may legally be sold
14 or provided in this state.

15 ~~8.~~ 9. "Income" means any form of payment, regardless of source, owed to an obligor,
16 including any earned, unearned, taxable or nontaxable income, workforce safety
17 and insurance benefits, disability benefits, unemployment compensation benefits,
18 annuity and retirement benefits, but excluding public assistance benefits
19 administered under state law.

20 ~~9.~~ 10. "Income payer" means any person, partnership, firm, corporation, limited liability
21 company, association, political subdivision, or department or agency of the state or
22 federal government owing income to an obligor and includes an obligor if the
23 obligor is self-employed.

24 ~~40.~~ 11. "Monthly support obligation" means an amount of child support ordered by a court
25 or administrative tribunal in a proceeding to establish or modify a child support
26 obligation, including amounts that are deferred for payment at a later date.

27 "Monthly support obligation" is defined without regard to any amount of child
28 support that an obligor is required to pay to avoid being held in contempt of court.

29 If an amount of past-due support has been ordered as a lump sum rather than
30 determined on a monthly basis, "monthly support obligation" means one hundred
31 sixty-eight dollars.

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.]~~ a child support agency.

~~45.~~ "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 2. AMENDMENT. Subsection 1 of section 14-09-09.34 of the North Dakota Century Code is amended and reenacted as follows:

1. An income payer who has been served with an income withholding order issued under section 14-09-09.15 for an obligor which includes an amount for past-due support shall notify the ~~public authority~~ child support agency before making any lump sum payment of ~~one thousand~~ five hundred dollars or more to the obligor.

"Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services ~~and does not include~~, reimbursement for expenses incurred by the obligor on behalf of the income payer, severance pay, or advances.

SECTION 3. AMENDMENT. Section 28-21-05.2 of the North Dakota Century Code is amended and reenacted as follows:

28-21-05.2. Department of human services may issue executions for child support arrearages.

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, the department of human services~~ an obligor is listed on the arrears registry, or if an obligor 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, a child support agency may issue an execution, against the property of the ~~judgment debtor~~ obligor, 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~~ child support agency must be issued as provided in section 28-21-06, except the past-due support need not be docketed as a judgment and the writ may omit: 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 that has been certified under section 14-08.1-08.
 - 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.~~
3. A writ issued by the ~~department of human services~~ child support agency is returnable to the ~~department~~ agency.
4. Terms defined in section 14-09-09.10 have the same meaning when used in this section.

SECTION 4. Three new subsections to section 35-34-01 of the North Dakota Century Code are created and enacted as follows:

"Arrears registry" has the meaning provided in section 14-09-09.10.

"Child support agency" has the meaning provided in section 14-09-09.10.

"Monthly support obligation" has the meaning provided in section 14-09-09.10.

SECTION 5. 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, ~~the public authority~~ a child support agency may establish a lien on personal property as provided in this chapter. 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 6. 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~~ child support agency 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. The notice must be in a form prescribed by the ~~public authority~~ department of human services and ~~contain~~ include 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~~ prohibits the account from being closed, and freezes all subsequent withdrawals from the account except as provided in subsection 3.
3. Notwithstanding a freeze on an account under subsection 2, the financial institution may, and within fifteen days of being served with the notice of the lien shall, satisfy any right of setoff which exists in connection with an account, payment orders that

1 were made by the obligor before the financial institution was served with notice of
2 lien, or other obligations of the obligor based upon written agreements or
3 instruments made or issued by the obligor before the financial institution was
4 served with notice of lien.

5 ~~3-~~ 4. A lien under this section is perfected when the financial institution is served with
6 notice of the lien.

7 **SECTION 7. AMENDMENT.** Section 35-34-08 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **35-34-08. Satisfaction and release of lien.** A child support agency may release a lien
10 ~~arising under this chapter.~~ Upon payment of all past-due child support obligations, ~~the public~~
11 ~~authority~~ a child support agency shall provide, within a reasonable time, an appropriate
12 satisfaction or release of a lien arising under this chapter.

13 **SECTION 8. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **35-34-09. Immunity from liability.** A person in possession of, or obligated with
16 respect to, property, who, upon demand of the ~~public authority~~ child support agency, surrenders
17 the property, freezes an account, or otherwise discharges the obligation to the ~~public authority~~
18 child support agency, complies with section 35-34-12, or otherwise acts in good faith to comply
19 with the requirements in this chapter, is immune from suit or any liability to the obligor or other
20 ~~person arising from the surrender or payment under any federal or state law.~~ The court shall
21 award reasonable attorney's fees and costs against any person who commences an action that
22 is subsequently dismissed by reason of the immunity granted by this section.

23 **SECTION 9. AMENDMENT.** Section 35-34-10 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **35-34-10. Action to enforce lien.** In any case in which there has been a refusal or
26 neglect to pay child support, the ~~public authority~~ child support agency, in addition to any other
27 relief, may enforce a lien arising under this chapter by demanding in writing the surrender of the
28 property, issuing an execution under chapter 28-21, or serving a deduction order under
29 section 14 of this Act. The child support agency also may file an action in any court of
30 competent jurisdiction to enforce a lien under this chapter. The filing of an action does not

preclude the ~~public authority~~ child support agency from pursuit of any other means of enforcement available under state or federal law.

SECTION 10. AMENDMENT. Section 35-34-12 of the North Dakota Century Code is amended and reenacted as follows:

35-34-12. Full faith and credit. A lien arising in another state, under a law of that state implementing the provisions of 42 U.S.C. 666(a)(4)(A), is entitled to full faith and credit when the party seeking to enforce that lien records or serves the lien documents in the manner provided under this code. No judicial notice or hearing is required prior to recording or service of the lien documents. A lien under this section may be enforced by the party in the same manner provided in section 35-34-10 for liens that are enforced by a child support agency.

SECTION 11. 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.

SECTION 12. 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 13. AMENDMENT. Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

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

8 **SECTION 14.** A new section to chapter 50-09 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Child support deduction order.**

- 11 1. The state agency, directly or through agents or child support agencies, may issue
12 an order requiring an income payer to deduct the amount identified in the order
13 from the portion of any lump sum payment to an obligor that has been withheld
14 under section 14-09-09.34.
- 15 2. The state agency, directly or through agents or child support agencies, may issue
16 an order requiring a financial institution to take one or more of the following actions
17 regarding any account of the obligor maintained in the financial institution:
- 18 a. Freeze the account upon service of the order until released by the state
19 agency;
- 20 b. Deduct the lump sum amount identified in the order; or
- 21 c. Deduct on an ongoing basis a stated amount not to exceed the amount
22 determined under section 14-09-09.30 in a manner similar to an income
23 withholding order issued under chapter 14-09 if income withholding is
24 inapplicable, ineffective, or insufficient to ensure monthly payment of child
25 support as determined under section 14-09-09.30.
- 26 3. The state agency shall serve the order on the income payer or financial institution
27 by first-class mail or in any other manner agreed to by the income payer or
28 financial institution and shall serve a copy of the order upon the obligor by
29 first-class mail to the obligor's last-known address.
- 30 4. The income payer or financial institution shall deduct the amount identified in the
31 order or the balance of the account, whichever is less, and transmit the funds to

1 the state disbursement unit within seven business days of the date the order is
2 served and on any future date or interval as directed in the order, together with a
3 report of the date upon which the amount was deducted from the account.

4 5. Except as provided in this section, an order issued under this section has priority
5 over any other legal process against the same account. If an account is frozen
6 under this section, the financial institution may, and within fifteen days of being
7 served with the order shall, satisfy any right of setoff which exists in connection
8 with an account, payment orders that were made by the obligor before the financial
9 institution was served with the order, or other obligations of the obligor based upon
10 written agreements or instruments made or issued by the obligor before the
11 financial institution was served with the order.

12 6. An income payer or financial institution may also withhold and retain an additional
13 sum of three dollars per deduction from the obligor's account or from the amount
14 retained under section 14-09-09.34 to cover expenses involved in transmitting
15 payment.

16 7. If an order requires the financial institution to make deductions on an ongoing
17 basis, the financial institution shall notify the state agency in the manner provided
18 in the order when the obligor no longer maintains an account in the financial
19 institution.

20 8. An order, levy, demand, execution, or other legal process issued by a public official
21 or public agency of a state as defined in section 14-12.2-01 that appears regular on
22 its face must be treated as if it had been issued by the state agency and be given
23 full faith and credit by the income payer or financial institution.

24 9. An income payer or financial institution receiving an order under this section is
25 subject to the same duties and liabilities as an income payer under section
26 14-09-09.3 unless the context indicates otherwise and is immune from suit or
27 liability for complying with an order under this section.