

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;

c. Designate a current child support payment as past-due support or other amount owed; or

d. Impose a fee or charge that exceeds twenty-five percent of the amount of past-due support collected by the collection agency.

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

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

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.

9. 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 are 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. Section 28-20-34 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

Revolving fund for repayment of uncollectible debts - Continuing appropriation.

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

SECTION 13. 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.

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.