

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1329

Introduced by

Representatives Weisz, Bellew, DeKrey

Senator Klein

1 A BILL for an Act to create and enact a new subsection to section 14-09-09.3 of the North  
2 Dakota Century Code, relating to the duties and liabilities of an income payer; to amend and  
3 reenact section 14-09-09.7 of the North Dakota Century Code, relating to the child support  
4 guidelines; and to provide an agency directive.

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

6 **SECTION 1.** A new subsection to section 14-09-09.3 of the North Dakota Century  
7 Code is created and enacted as follows:

8 If an income payer makes an error in the remittal information the income payer  
9 provides to the state disbursement unit, the income payer has not complied with  
10 this section and is responsible for the error, but has a cause of action for  
11 reimbursement against any person that receives funds from the disbursement unit  
12 as a result of the error and refuses to return the funds upon request.

13 **SECTION 2. AMENDMENT.** Section 14-09-09.7 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **14-09-09.7. Child support guidelines.**

- 16 1. The department of human services shall establish child support guidelines to assist  
17 courts in determining the amount a parent should be expected to contribute toward  
18 the support of the child under this section. The guidelines must:
- 19 a. Include consideration of gross income. For purposes of the guidelines, gross  
20 income does not include an employee benefit over which the employee does  
21 not have significant influence or control over the nature or amount unless:
- 22 (1) That benefit may be liquidated; and  
23 (2) Liquidation of that benefit does not result in the employee incurring an  
24 income tax penalty.

- 1           b. Authorize an expense deduction for determining net income.
- 2           c. Designate other available resources to be considered.
- 3           d. Specify the circumstances that should be considered in reducing support
- 4                 contributions on the basis of hardship.
- 5           e. Include consideration of extended periods of time a minor child spends with
- 6                 the child's obligor parent.
- 7           f. ~~Authorize a rebuttal of the presumption provided in subsection 3 in cases of~~
- 8                 ~~atypical overtime wages or nonrecurring bonuses over which the obligor does~~
- 9                 ~~not have significant influence or control.~~
- 10          g. Authorize a rebuttal of the presumption provided in subsection ~~3~~ 4 based on
- 11                 the proportionate net income of the obligor and the obligee when the net
- 12                 income of the obligee is at least three times higher than the net income of the
- 13                 obligor.
- 14          ~~h.~~ g. Include consideration of an obligated party's responsibility for health
- 15                 insurance coverage or other medical support under section 14-09-08.10.
- 16          2. The guidelines may not take into consideration cases of atypical overtime wages
- 17                 or nonrecurring bonuses over which the obligor does not have significant influence
- 18                 or control.
- 19          3. The department shall accept and compile pertinent and reliable information from
- 20                 any available source in order to establish the child support guidelines. Copies of
- 21                 the guidelines must be made available to courts, state's attorneys, and upon
- 22                 request, to any other state or county officer or agency engaged in the
- 23                 administration or enforcement of this chapter.
- 24          ~~3.~~ 4. There is a rebuttable presumption that the amount of child support that would
- 25                 result from the application of the child support guidelines is the correct amount of
- 26                 child support. The presumption may be rebutted if a preponderance of the
- 27                 evidence in a contested matter establishes, applying criteria established by the
- 28                 child support agency which take into consideration the best interests of the child,
- 29                 that the child support amount established under the guidelines is not the correct
- 30                 amount of child support. A written finding or a specific finding on the record must

be made if the court determines that the presumption has been rebutted. The finding must:

- a. State the child support amount determined through application of the guidelines;
- b. Identify the criteria that rebut the presumption of correctness of that amount; and
- c. State the child support amount determined after application of the criteria that rebut the presumption.

~~4.~~ 5. The department shall institute a new rulemaking proceeding under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial rulemaking proceeding must be commenced with a notice of proposed adoption, amendment, or repeal by August 1, 1998, and subsequent rulemaking proceedings must be so commenced at least once every four years thereafter. Before commencing any rulemaking proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council.

~~5.~~ 6. The guidelines established under this section may include a separate amount of child support for the child's health insurance coverage, reimbursement for public health coverage provided under chapter 50-29, and other medical support.

### **SECTION 3. ADMINISTRATIVE RULEMAKING - ADDITIONAL REBUTTAL**

**CRITERIA.** As part of the first rulemaking commenced under section 14-09-09.7 after the effective date of this Act, the Department of Human Services shall adopt new criteria for rebutting the presumptively correct amount of support determined under the child support guidelines based on the increased ability of an obligor, whose income is decreased based on depreciation, to provide child support.