

SENATE BILL NO. 2160

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact sections 14-09-08.20, 14-09-09.32, 14-09-09.33, and
2 14-09-09.34 and two new subsections to section 34-15-03 of the North Dakota Century Code,
3 relating to medical support, agreements to waive child support, judicial offsets of child support,
4 and income payer duties; to amend and reenact sections 14-09-08.11, 14-09-09.13, and
5 14-09-09.15, subsections 1 and 9 of section 14-09-09.16, sections 14-09-09.17, 14-09-09.30,
6 and 26.1-36.5-03, and subsections 2 and 3 of section 34-15-01 of the North Dakota Century
7 Code, relating to child support, medical support, and past-due child support; to provide an
8 effective date; and to declare an emergency.

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

10 **SECTION 1. AMENDMENT.** Section 14-09-08.11 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **14-09-08.11. Eligible child - Employer to permit enrollment - Employer duties and**
13 **liabilities - Obligor contest.**

14 1. When an obligor is required to cover a ~~minor~~ child as a beneficiary under section
15 14-09-08.10, the child is eligible for health insurance coverage as a dependent of
16 the obligor ~~until the child's eighteenth birthday or until further order of the court.~~ If
17 health insurance coverage required under section 14-09-08.10 is available through
18 an ~~income payer employer~~, the ~~income payer employer~~ must:
19 a. Permit the obligor to enroll under family coverage any child who is otherwise
20 eligible for coverage without regard to any open enrollment restrictions;
21 b. If the obligor is enrolled but fails to make application to obtain coverage for the
22 child, enroll the child under family coverage upon application by the obligee;
23 c. ~~If the obligor is enrolled but fails to make application to obtain coverage for~~
24 ~~the child, enroll the child under family coverage upon application by the public~~

- 1 ~~authority, subject to subsection 2, whenever the child receives~~ Upon receipt of
2 the national medical support notice issued under section 14-09-08.20:
- 3 (1) ~~Benefits through temporary assistance for needy families or foster care~~
4 ~~under chapter 50-09, or medical assistance under chapter 50-24.1; or~~
5 Comply with the provisions of the national medical support notice; and
- 6 (2) ~~Services provided upon application of an obligee to the child support~~
7 ~~agency~~ Transfer the national medical support notice to the insurer that
8 provides any such health insurance coverage for which the child is
9 eligible, within twenty business days after the date of the national
10 medical support notice;
- 11 d. Not disenroll or eliminate coverage for any child unless the ~~income payer~~
12 employer has eliminated family health coverage for all of its employees or the
13 employer is provided satisfactory written evidence that:
- 14 (1) The order issued under section 14-09-08.10 is no longer in effect; or
15 (2) The child is or will be enrolled in comparable coverage that will take
16 effect no later than the effective date of disenrollment; ~~or~~
- 17 ~~(3) The income payer has eliminated family health coverage for all of its~~
18 ~~employees;~~
- 19 e. Withhold from the obligor's compensation the obligor's share, if any, of
20 premiums for health insurance coverage and pay this amount to the ~~health~~
21 ~~insurance provider~~ insurer; and
- 22 f. If the amount required to be withheld under subdivision e, either alone or
23 when added to the total of any withholding required by an order issued under
24 section 14-09-09.15, exceeds fifty percent of the obligor's disposable income,
25 withhold fifty percent of the obligor's disposable income-;
- 26 g. In the case of an obligor contest under subsection 2, initiate and continue
27 withholding until the employer receives notice that the contest is resolved; and
- 28 h. Promptly notify the public authority, in the same manner as required under
29 subsection 9 of section 14-09-09.16, whenever the obligor's employment is
30 terminated.

- 1 2. ~~Before making application under subdivision e of subsection 1, the public authority~~
2 ~~shall provide notice to the obligor that the obligor may contest the proposed~~
3 ~~application by filing a written request for a hearing within ten days of the date the~~
4 ~~notice is issued. If the obligor contests the application for coverage, a hearing~~
5 ~~must be held, and the court shall require the public authority to make application if~~
6 ~~it determines coverage for the child is available to the obligor at reasonable cost.~~
7 The obligor may contest the withholding provided for in subdivision e of
8 subsection 1 by filing a request for a hearing within ten days of the date of the
9 national medical support notice issued under section 14-09-08.20. If the obligor
10 contests that withholding, the court shall:
- 11 a. Hold a hearing within ten working days after the date of the request; and
12 b. Confirm the withholding in the absence of a finding:
13 (1) Of a mistake of fact; or
14 (2) That the obligee is required to provide health insurance coverage
15 pursuant to section 14-09-08.10.
- 16 3. Withholding required by an order issued under section 14-09-09.15 must be
17 satisfied before any payment is made to the ~~health insurance provider~~ insurer. If
18 the amount remaining is insufficient to pay the obligor's share of premiums for
19 health insurance coverage, the obligor may authorize additional withholding to pay
20 the obligor's share. If the obligor does not authorize additional withholding, and the
21 health insurance coverage will lapse as a result, the ~~income payer~~ employer must
22 promptly inform the ~~clerk of court~~ or public authority that issued the order under
23 ~~section 14-09-09.15~~ of the insufficiency.
- 24 4. An employer receiving a national medical support notice 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.
- 27 5. For purposes of this section:
28 a. "Employer" means an entity or individual who would be determined to be an
29 employer under section 3401(d) of the Internal Revenue Code of 1986, as
30 amended [26 U.S.C. 3401(d)], and includes any governmental entity and any
31 labor organization; and

1 b. "Insurer" has the meaning provided in section 26.1-36.5-01.

2 **SECTION 2.** Section 14-09-08.20 of the North Dakota Century Code is created and
3 enacted as follows:

4 **14-09-08.20. National medical support notice - Public authority duties.**

5 1. When an obligor is required to provide health insurance coverage for a child as a
6 beneficiary under section 14-09-08.10, the order is being enforced under title IV-D,
7 and the obligor's employer has been identified, the public authority shall use the
8 national medical support notice, when appropriate, to enforce the provision of
9 health insurance coverage for the child. The public authority shall:

10 a. Serve the national medical support notice on the employer by first-class mail
11 or in any other manner agreed to by the employer:

12 (1) Within two business days after the date of entry in the state directory of
13 new hires of an employee who is an obligor of an order being enforced
14 under title IV-D if the employer was identified based upon that entry; or

15 (2) Within a reasonable time;

16 b. Serve notice of the national medical support notice on the obligor by first-class
17 mail at the obligor's last-known address;

18 c. If the insurer notified the public authority of more than one available health
19 insurance coverage option, select:

20 (1) The option chosen by the state medicaid agency if an assignment
21 under chapter 50-24.1 is in effect for the child;

22 (2) The option timely chosen by the obligee if paragraph 1 does not apply;

23 (3) The option that provides basic coverage, that is reasonably accessible
24 to the child, and for which the obligor's share of the premium is lowest if
25 paragraphs 1 and 2 do not apply; or

26 (4) The option that is reasonably accessible to the child and for which the
27 obligor's share of the premium is lowest if paragraphs 1, 2, and 3 do not
28 apply; and

29 2. If the public authority does not select an option under subdivision c of subsection 1
30 within twenty business days, the insurer shall enroll the child, and the obligor if
31 necessary, in the insurer's default plan, if any.

- 1 3. The public authority, the state medicaid agency, and any official, employee, or
2 agent of either agency are immune from any liability arising out of the selection of,
3 or failure to select, an option under subdivision c of subsection 1.
- 4 4. For purposes of this section:
- 5 a. "Basic coverage" means health insurance that includes coverage for the
6 following medically necessary services: preventive care, emergency care,
7 inpatient and outpatient hospital care, emergency care, inpatient and
8 outpatient hospital care, physician services whether provided within or outside
9 a hospital setting, diagnostic laboratory, and diagnostic and therapeutic
10 radiological services;
- 11 b. "Employer" means an entity or individual who would be determined to be an
12 employer under section 3401(d) of the Internal Revenue Code of 1986, as
13 amended [26 U.S.C. 3401(d)], and includes any governmental entity and any
14 labor organization;
- 15 c. "Insurer" has the meaning provided in section 26.1-36.5-01;
- 16 d. "National medical support notice" means the notice promulgated pursuant to
17 section 401(b) of the Child Support Performance and Incentive Act of 1998
18 [Pub. L. 105-200; 112 Stat. 645] and regulations adopted thereunder; and
- 19 e. "Title IV-D" has the meaning provided in section 50-09-01.

20 **SECTION 3. AMENDMENT.** Section 14-09-09.13 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **14-09-09.13. Procedure - Notice to obligor.** If immediate income withholding under
23 section 14-09-09.24 has not been implemented and an obligor is delinquent, if an obligee's
24 request for income withholding is approved, or if a court changes its finding that there is good
25 cause not to require immediate income withholding, the ~~clerk of court~~ or public authority shall
26 serve the notice required under this section upon the obligor whenever issuing an income
27 withholding order. The notice must state:

- 28 1. That the obligor is delinquent in the payment of child support, that a request for
29 withholding has been made by the obligee and approved by a child support
30 agency, or that there is no longer good cause not to require immediate income

- 1 withholding, as the case may be, and the obligor is therefore subject to an income
2 withholding order on all income.
- 3 2. The amount of child support owed and the amount of arrearage, if any.
- 4 3. The total amount of money that will be withheld by the income ~~payer~~ payer from
5 the obligor's income in each month as determined under section 14-09-09.30.
- 6 4. That the income ~~payer~~ payer may withhold an additional sum of three dollars to
7 cover the income ~~payer's~~ payer's expenses.
- 8 5. That the income withholding order has been issued without further order of the
9 court.
- 10 6. That the obligor may contest the issuance of the income withholding order by filing
11 a written request for hearing within ten days of the date of the notice made under
12 this section.
- 13 7. That if the obligor contests the income withholding order pursuant to
14 section 14-09-09.14, a hearing will be held and the court will determine and issue
15 an order consistent with the requirements of section 14-09-09.14.
- 16 8. That the income withholding order applies to any current or subsequent income
17 ~~payer~~ payer or period of employment.

18 **SECTION 4. AMENDMENT.** Section 14-09-09.15 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **14-09-09.15. Form - Effect of income withholding order.** The income withholding
21 order must be issued in the name of the state of North Dakota in the standard format for notice
22 of the order prescribed by the secretary of the United States department of health and human
23 services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for
24 the income payer to comply with the income withholding order, and be directed to all current
25 and subsequent income payers of the obligor. The income withholding order is binding on the
26 income payer until further notice by the ~~clerk~~ or the public authority and applies to all current
27 and subsequent periods in which income is owed the obligor by the income payer. The income
28 withholding order has priority over any other legal process against the same income.

29 **SECTION 5. AMENDMENT.** Subsections 1 and 9 of section 14-09-09.16 of the North
30 Dakota Century Code are amended and reenacted as follows:

1 1. The ~~clerk of court or the~~ public authority shall serve the income withholding order
2 on the income payer by first-class mail or in any other manner agreed to by the
3 income payer, and upon the obligor by first-class mail to the obligor's last-known
4 address.

5 9. The income payer shall notify the ~~clerk of court or the~~ public authority in writing of
6 the termination of a duty to pay income to the obligor within seven business days of
7 the termination. The notification must include the name and address of the
8 obligor's subsequent income payer, if known.

9 **SECTION 6. AMENDMENT.** Section 14-09-09.17 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **14-09-09.17. Amendment - Termination of income withholding order.** Upon
12 amendment or termination of an income withholding order, the ~~clerk of court or the~~ public
13 authority shall send appropriate notice to the income ~~payer~~ payer. An income withholding order
14 is to be amended by the ~~clerk or the~~ public authority when the total amount of money to be
15 withheld is changed by elimination of arrearages or by court-ordered change in amount of child
16 support. An income withholding order is to be terminated when the duty to support ceases and
17 all child support arrearages have been paid. When two or more income ~~payors~~ payers have
18 been subjected to income withholding orders with respect to a child support obligation, the ~~clerk~~
19 ~~or the~~ public authority shall suspend the income withholding order directed to one or more
20 income ~~payors~~ payers, provided that the amount of child support withheld by the remaining
21 income ~~payer~~ payer or ~~payors~~ payers equals the amount determined under section
22 14-09-09.30. The ~~clerk or the~~ public authority shall immediately reinstate any suspended
23 income withholding order should any child support obligation of the obligor thereafter become
24 delinquent. The ~~clerk or the~~ public authority shall provide a copy of the reinstated income
25 withholding order, by first-class mail, to the obligor and the income ~~payer~~ payer

26 **SECTION 7. AMENDMENT.** Section 14-09-09.30 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **14-09-09.30. Monthly amount due.** The total amount of child support due in each
29 month is ~~the sum of~~:

30 1. The If there is a current monthly support obligation, the sum of the obligor's current
31 monthly support obligation; and

- 1 amount of past-due child support owed to the obligor by the obligee. An order for
2 an offset is permitted under this subsection only if:
- 3 a. The proposed offset is limited to past-due child support and does not apply to
4 child support owed in the current month or owed in any future month;
5 b. The proposed offset does not include any past-due child support that has
6 been assigned;
7 c. Neither party whose past-due child support obligation will be reduced or
8 eliminated by the proposed offset owes past-due child support to another
9 obligee; and
10 d. The opportunity to offset past-due child support under this section has not
11 been used by either party as an incentive to avoid paying child support in the
12 month in which it is due.
- 13 2. The order must include a specific finding that the proposed offset serves the best
14 interests of the children to whom the obligor and obligee owe a duty of support.
- 15 3. There is a rebuttable presumption that the opportunity to offset past-due child
16 support under this section has been used as an incentive to avoid paying child
17 support in the month in which it is due if a prior offset has been ordered.
- 18 4. Past-due child support owed by an obligor to an obligee may not be offset by
19 past-due child support owed to the obligor by the obligee except as permitted in
20 this section.
- 21 5. An obligor's child support obligation for the current month or for a future month may
22 not be offset by past-due child support or other debts owed to the obligor by an
23 obligee unless the court orders the offset as a method of satisfying an
24 overpayment of child support that results from the establishment or reduction of a
25 child support obligation.
- 26 6. An offset of child support under this section is considered a payment of child
27 support by both the obligor and the obligee. A copy of the order for an offset must
28 be provided to the state disbursement unit.
- 29 7. As used in this section, "child support" does not include spousal support.

30 **SECTION 10.** Section 14-09-09.34 of the North Dakota Century Code is created and
31 enacted as follows:

1 **14-09-09.34. Lump sum payments.**

- 2 1. An income payer who has been served with an income withholding order issued
3 under section 14-09-09.15 for an obligor shall notify the public authority before
4 making any lump sum payment of five hundred dollars or more to the obligor.
5 "Lump sum payment" includes severance pay, pay in lieu of vacation or other
6 leave, bonus, commission, advance, and any other payment to an obligor but does
7 not include periodic payments made on regular paydays as compensation for
8 services and does not include reimbursement for expenses incurred by the obligor
9 on behalf of the income payer.
- 10 2. An income payer who provides notice of a lump sum payment to the public
11 authority under subsection 1 may not make the payment to the obligor for thirty
12 days from the date of the notice to the public authority or until the income payer
13 receives written authorization from the public authority to make the lump sum
14 payment to the obligor, whichever occurs first.
- 15 3. Notwithstanding subsection 2, an income payer who provides notice of a lump sum
16 payment to the public authority under subsection 1 may not make a lump sum
17 payment to an obligor if the income payer has been notified that an execution,
18 garnishment, attachment, or other process has been initiated regarding the lump
19 sum payment to satisfy a child support obligation of the obligor.
- 20 4. An income payer who owes a lump sum payment under this section is subject to
21 the duties and liabilities in section 14-09-09.3 unless the context indicates
22 otherwise.
- 23 5. This section does not apply to any portion of a lump sum payment that must be
24 paid to satisfy an income withholding order issued under section 14-09-09.15.

25 **SECTION 11. AMENDMENT.** Section 26.1-36.5-03 of the North Dakota Century Code
26 is amended and reenacted as follows:

27 **26.1-36.5-03. Enrollment of children.** If a parent is required by a court or
28 administrative order to provide health coverage for a child and the parent is eligible for family
29 health coverage through an insurer, the insurer shall:

- 1 1. Permit the parent to enroll under family coverage any child who is otherwise
2 eligible for coverage without regard to any open enrollment restrictions and subject
3 to the prohibited practices provisions of this chapter;
- 4 2. If a parent fails to provide health coverage for any child, enroll the child under
5 family coverage upon application by the child's other parent or by the department
6 of human services; ~~and~~
- 7 3. Upon receipt of the national medical support notice issued under section
8 14-09-08.20 from the employer:
 - 9 a. Comply with the provisions of the national medical support notice;
 - 10 b. Within forty business days of the date of the national medical support notice,
11 take appropriate action pursuant to the notice; and
 - 12 c. Enroll the child, and the obligor if necessary, in the insurer's default plan, if
13 any, if required under subsection 2 of section 14-09-08.20; and
- 14 4. Not disenroll or eliminate coverage for any child unless the insurer is provided
15 satisfactory written evidence that:
 - 16 a. The court or administrative order is no longer in effect; or
 - 17 b. The child is or will be enrolled with comparable coverage that will take effect
18 no later than the effective date of disenrollment.

19 **SECTION 12. AMENDMENT.** Subsections 2 and 3 of section 34-15-01 of the North
20 Dakota Century Code are amended and reenacted as follows:

- 21 2. "Employee" means ~~an~~:
 - 22 a. An individual who would be determined to be an employee under chapter 24
23 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401 et seq.],
24 but does not include an employee of a federal or state agency performing
25 intelligence or counterintelligence functions, if the head of the agency has
26 determined that reporting under this chapter, with respect to that employee,
27 could endanger the safety of the employee or compromise an ongoing
28 investigation or intelligence mission; and
 - 29 b. An individual who receives a payment from an employer as defined in
30 subdivision b of subsection 3.
- 31 3. "Employer" means ~~an~~:

- 1 a. An entity or individual who would be determined to be an employer under
2 section 3401(d) of the Internal Revenue Code of 1986, as amended
3 [26 U.S.C. 3401(d)], and includes any governmental entity and any labor
4 organization; and
5 b. An entity or individual who makes a payment to an individual, excluding
6 payments that are identified by the public authority through a data match
7 agreement under section 50-09-08.2, and who, as a result of such payment, is
8 required to file a copy of a 1099 informational form.

9 **SECTION 13.** Two new subsections to section 34-15-03 of the North Dakota Century
10 Code are created and enacted as follows:

11 For purposes of this section, an employee as defined in subdivision a of
12 subsection 2 of section 34-15-01 is deemed to be hired on the first day the
13 employee works for wages.

14 For purposes of this section, an employee as defined in subdivision b of
15 subsection 2 of section 34-15-01 is deemed to be hired on the date of an
16 agreement between the employee and the employer or the date the employer
17 makes a payment to the employee, whichever occurs first.

18 **SECTION 14. EFFECTIVE DATE.** Section 7 of this Act applies to all child support
19 obligations that exist on or after the effective date of this Act and sections 1, 2, and 11 of this
20 Act become effective on July 1, 2003.

21 **SECTION 15. EMERGENCY.** Sections 1, 2, and 11 of this Act are declared to be an
22 emergency measure.