

**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           12. "Obligee" means a person, including a state or political subdivision, to whom a duty  
2           of support is owed.

3       ~~11.~~ 13. "Obligor" means any person owing a duty of support.

4       ~~12.~~ 14. "Past-due support" means child support that is not paid by the earlier of:

5           a.    The date a court order or an order of an administrative process established  
6           under state law requires payment to be made; or

7           b.    The last day of the month or other period the payment was intended to cover.

8       ~~13.~~ 15. "Payday" means the day upon which the income payer pays or otherwise credits  
9           the obligor.

10      ~~14.~~ 16. "Public authority" means ~~the department of human services in execution of its~~  
11           ~~duties pursuant to the state plan submitted under chapter 50-09 in conformance~~  
12           ~~with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C.~~  
13           ~~651 et seq.]~~ a child support agency.

14      ~~15.~~ "System implementation date" means ~~the date the public authority certifies to the~~  
15           ~~secretary of state and the legislative council that the statewide automated data~~  
16           ~~processing system, established under section 50-09-02.1, is operating.~~

17           **SECTION 2. AMENDMENT.** Subsection 1 of section 14-09-09.34 of the North Dakota  
18 Century Code is amended and reenacted as follows:

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

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

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

30           **28-21-05.2. Department of human services may issue executions for child**  
31 **support arrearages.**

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

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

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

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

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

3           **SECTION 5. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **35-34-02. Lien for past-due child support.** ~~When a past-due child support obligation~~  
6 ~~is at least six times the monthly child support obligation and the~~ an obligor is ~~not current in a~~  
7 ~~court established plan to repay the past due support listed on the arrears registry, the public~~  
8 ~~authority~~ a child support agency may establish a lien on personal property as provided in this  
9 chapter. The amount of a lien under this chapter includes any past-due support that is owed  
10 when the lien is perfected and any past-due support that accrues after the lien is perfected.

11           **SECTION 6. AMENDMENT.** Section 35-34-05 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13           **35-34-05. Account lien.**

- 14           1. In the case of an account maintained in a financial institution, ~~the public authority~~  
15 child support agency may establish a lien on the account by serving a notice of lien  
16 upon the financial institution in the manner provided for service of a summons in a  
17 civil action. The notice must be in a form prescribed by the ~~public authority~~  
18 department of human services and ~~contain~~ include the name, social security  
19 number, or other taxpayer identification number and last-known address of the  
20 obligor, ~~the amount of past due support for which a lien is claimed, and any other~~  
21 ~~information required by the public authority.~~ The notice of lien must state that the  
22 child support obligation is past due and that a copy of the notice of lien has been  
23 served on the obligor by first-class mail at the obligor's last-known address.
- 24           2. Upon service of the notice of lien on a financial institution in accordance with this  
25 section, the lien attaches to accounts of the obligor maintained in the financial  
26 institution, ~~except to the extent necessary to~~ prohibits the account from being  
27 closed, and freezes all subsequent withdrawals from the account except as  
28 provided in subsection 3.
- 29           3. Notwithstanding a freeze on an account under subsection 2, the financial institution  
30 may, and within fifteen days of being served with the notice of the lien shall, satisfy  
31 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

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

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

5 **35-34-12. Full faith and credit.** A lien arising in another state, under a law of that state  
6 implementing the provisions of 42 U.S.C. 666(a)(4)(A), is entitled to full faith and credit when  
7 the party seeking to enforce that lien records or serves the lien documents in the manner  
8 provided under this code. No judicial notice or hearing is required prior to recording or service  
9 of the lien documents. A lien under this section may be enforced by the party in the same  
10 manner provided in section 35-34-10 for liens that are enforced by a child support agency.

11 **SECTION 11.** A new section to chapter 50-09 of the North Dakota Century Code is  
12 created and enacted as follows:

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

17 **SECTION 12. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota  
18 Century Code is amended and reenacted as follows:

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

30 **SECTION 13. AMENDMENT.** Subsection 1 of section 50-09-32 of the North Dakota  
31 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.