

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2160
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to create and enact sections 14-09-08.20, 14-09-09.32, 14-09-09.33, and 14-09-09.34 and a new section to chapter 50-09 of the North Dakota Century Code, relating to medical support, agreements to waive child support, judicial offsets of child support, income payer duties, and cooperative agreements for child support enforcement services; to amend and reenact sections 14-09-08.11, 14-09-09.13, and 14-09-09.15, subsections 1 and 9 of section 14-09-09.16, and sections 14-09-09.17, 14-09-09.30, and 26.1-36.5-03 of the North Dakota Century Code, relating to child support, medical support, and past-due child support; to provide a continuing appropriation; to provide for a report; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. When an obligor is required to cover a ~~minor~~ child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor ~~until the child's eighteenth birthday or until further order of the court.~~ If health insurance coverage required under section 14-09-08.10 is available through an ~~income payer employer,~~ the income payer employer must:
 - a. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions;
 - b. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee;
 - c. ~~If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the public authority, subject to subsection 2, whenever the child receives~~ Upon receipt of the national medical support notice issued under section 14-09-08.20:
 - (1) ~~Benefits through temporary assistance for needy families or foster care under chapter 50-09, or medical assistance under chapter 50-24.1; or~~ Comply with the provisions of the national medical support notice; and
 - (2) ~~Services provided upon application of an obligee to the child support agency~~ Transfer the national medical support notice to the insurer that provides any such health insurance coverage for which the child is eligible, within twenty business days after the date of the national medical support notice;
 - d. Not disenroll or eliminate coverage for any child unless the ~~income payer employer~~ has eliminated family health coverage for all of its employees or the employer is provided satisfactory written evidence that:
 - (1) The order issued under section 14-09-08.10 is no longer in effect; or

- (2) The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment; ~~or~~
 - (3) ~~The income payer has eliminated family health coverage for all of its employees;~~
 - e. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the ~~health insurance provider insurer;~~ insurer; and
 - f. If the amount required to be withheld under subdivision e, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income-;
 - g. In the case of an obligor contest under subsection 2, initiate and continue withholding until the employer receives notice that the contest is resolved; and
 - h. Promptly notify the public authority, in the same manner as required under subsection 9 of section 14-09-09.16, whenever the obligor's employment is terminated.
2. ~~Before making application under subdivision e of subsection 1, the public authority shall provide notice to the obligor that the obligor may contest the proposed application by filing a written request for a hearing within ten days of the date the notice is issued. If the obligor contests the application for coverage, a hearing must be held, and the court shall require the public authority to make application if it determines coverage for the child is available to the obligor at reasonable cost. The obligor may contest the withholding provided for in subdivision e of subsection 1 by filing a request for a hearing within ten days of the date of the national medical support notice issued under section 14-09-08.20. If the obligor contests that withholding, the court shall:~~
- a. Hold a hearing within ten working days after the date of the request; and
 - b. Confirm the withholding in the absence of a finding:
 - (1) Of a mistake of fact; or
 - (2) That the obligee is required to provide health insurance coverage pursuant to section 14-09-08.10.
3. Withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the ~~health insurance provider insurer~~. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the ~~income payer~~ employer must promptly inform the ~~clerk of court or~~ public authority ~~that issued the order under section 14-09-09.15~~ of the insufficiency.
4. An employer receiving a national medical support notice under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.
5. For purposes of this section:
- a. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization; and

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

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

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

1. When an obligor is required to provide health insurance coverage for a child as a beneficiary under section 14-09-08.10, the order is being enforced under title IV-D, and the obligor's employer has been identified, the public authority shall use the national medical support notice, when appropriate, to enforce the provision of health insurance coverage for the child. The public authority shall:
 - a. Serve the national medical support notice on the employer by first-class mail or in any other manner agreed to by the employer:
 - (1) Within two business days after the date of entry in the state directory of new hires of an employee who is an obligor of an order being enforced under title IV-D if the employer was identified based upon that entry; or otherwise
 - (2) Within a reasonable time;
 - b. Serve notice of the national medical support notice on the obligor by first-class mail at the obligor's last-known address;
 - c. If the insurer notified the public authority of more than one available health insurance coverage option, select:
 - (1) The option chosen by the state medicaid agency if an assignment under chapter 50-24.1 is in effect for the child;
 - (2) The option timely chosen by the obligee if paragraph 1 does not apply;
 - (3) The option that provides basic coverage, that is reasonably accessible to the child, and for which the obligor's share of the premium is lowest if paragraphs 1 and 2 do not apply; or
 - (4) The option that is reasonably accessible to the child and for which the obligor's share of the premium is lowest if paragraphs 1, 2, and 3 do not apply; and
 - d. Promptly notify the employer when a current order for medical support for which the public authority is responsible is no longer in effect.
2. If the public authority does not select an option under subdivision c of subsection 1 within twenty business days, the insurer shall enroll the child, and the obligor if necessary, in the insurer's default plan, if any.
3. The public authority, the state medicaid agency, and any official, employee, or agent of either agency are immune from any liability arising out of the selection of, or failure to select, an option under subdivision c of subsection 1.
4. For purposes of this section:
 - a. "Basic coverage" means:
 - (1) Health insurance that includes coverage for the following medically necessary services: preventive care, emergency care, inpatient and outpatient hospital care, physician services whether provided within or outside a hospital setting, diagnostic laboratory, and diagnostic and therapeutic radiological services; or

- (2) A basic group health benefit plan approved under section 26.1-36.3-08;
- b. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization;
 - c. "Insurer" has the meaning provided in section 26.1-36.5-01;
 - d. "National medical support notice" means the notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 [Pub. L. 105-200; 112 Stat. 645] and regulations adopted thereunder; and
 - e. "Title IV-D" has the meaning provided in section 50-09-01.

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

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

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by a child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income ~~payer~~ payer from the obligor's income in each month as determined under section 14-09-09.30.
4. That the income ~~payer~~ payer may withhold an additional sum of three dollars to cover the income ~~payer's~~ payer's expenses.
5. That the income withholding order has been issued without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.
7. That if the obligor contests the income withholding order pursuant to section 14-09-09.14, a hearing will be held and the court will determine and issue an order consistent with the requirements of section 14-09-09.14.
8. That the income withholding order applies to any current or subsequent income ~~payer~~ payer or period of employment.

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

14-09-09.15. Form - Effect of income withholding order. The income withholding order must be issued in the name of the state of North Dakota in the standard format for notice of the order prescribed by the secretary of the United States department of health and human services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for the income payer to comply with the income withholding order, and be directed to all current and subsequent income payers of the obligor. The income withholding order is binding on the income payer until further notice by the

~~clerk or the~~ public authority and applies to all current and subsequent periods in which income is owed the obligor by the income payer. The income withholding order has priority over any other legal process against the same income.

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

1. The ~~clerk of court or the~~ public authority shall serve the income withholding order on the income payer by first-class mail or in any other manner agreed to by the income payer, and upon the obligor by first-class mail to the obligor's last-known address.
9. The income payer shall notify the ~~clerk of court or the~~ public authority in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payer, if known.

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

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

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

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

1. ~~The~~ If there is a current monthly support obligation, the sum of the obligor's current monthly support obligation; and
2. a. The amount the obligor is ordered to pay toward any outstanding arrearage; or
b. If no order to repay an arrearage exists, an amount for application to any arrearage, ~~subject to the limitations of section 14-09-09.16,~~ equal to:
(1) ~~Twenty~~ twenty percent of the obligor's current monthly support obligation; or
- (2) 2. If there is no current monthly support obligation, ~~the most recent monthly support obligation;~~
 - a. An amount equal to the greater of:
 - (1) The amount the obligor is ordered to pay toward any outstanding arrearage; or
 - (2) The sum of the obligor's most recent monthly support obligation and twenty percent of the obligor's most recent monthly support obligation;

- b. An amount the obligor is ordered to pay toward an arrearage during periods when the supported child resides with the obligor pursuant to a court order; or
- c. An amount the obligor is ordered to pay toward an arrearage if that amount is included in an order issued when there is no current monthly support obligation.

SECTION 8. Section 14-09-09.32 of the North Dakota Century Code is created and enacted as follows:

14-09-09.32. Agreements to waive child support. An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction. A copy of the order of approval must be provided to the state disbursement unit. As used in this section, "child support" does not include spousal support.

SECTION 9. Section 14-09-09.33 of the North Dakota Century Code is created and enacted as follows:

14-09-09.33. Judicial offset of child support.

1. Notwithstanding section 14-09-09.31, a court may order that a specific amount of past-due child support owed by an obligor to an obligee be offset by an equal amount of past-due child support owed to the obligor by the obligee. An order for an offset is permitted under this subsection only if:
 - a. The proposed offset is limited to past-due child support and does not apply to child support owed in the current month or owed in any future month;
 - b. The proposed offset does not include any past-due child support that has been assigned;
 - c. Neither party whose past-due child support obligation will be reduced or eliminated by the proposed offset owes past-due child support to another obligee; and
 - d. The opportunity to offset past-due child support under this section has not been used by either party as an incentive to avoid paying child support in the month in which it is due.
2. The order must include a specific finding that the proposed offset serves the best interests of the children to whom the obligor and obligee owe a duty of support.
3. Past-due child support owed by an obligor to an obligee may not be offset by past-due child support owed to the obligor by the obligee except as permitted in this section.
4. An obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation.
5. An offset of child support under this section is considered a payment of child support by both the obligor and the obligee. A copy of the order for an offset must be provided to the state disbursement unit.
6. As used in this section, "child support" does not include spousal support.

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

14-09-09.34. Lump sum payments.

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 before making any lump sum payment of one thousand 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.
2. An income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make more than one-half of the payment to the obligor for thirty days from the date of the notice to the public authority or until the income payer receives written authorization from the public authority to make the lump sum payment to the obligor, whichever occurs first.
3. Notwithstanding subsection 2, an income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make a lump sum payment to an obligor if the income payer has been notified that an execution, garnishment, attachment, or other process has been initiated regarding the lump sum payment to satisfy a child support obligation of the obligor.
4. An income payer who owes a lump sum payment under this section is subject to the duties and liabilities in section 14-09-09.3 unless the context indicates otherwise.
5. This section does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under section 14-09-09.15.

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

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

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

- b. The child is or will be enrolled with comparable coverage that will take effect no later than the effective date of disenrollment.

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

Continuing appropriation - Cooperative agreements for child support enforcement services. All federal funds and other income generated by the state agency under a cooperative agreement with one or more county child support agencies for centralized administration of child support enforcement services, or with an Indian tribe for child support enforcement services, is appropriated on a continuing basis for the sole purpose of hiring additional staff and payment of other expenses as necessary to carry out the state agency's duties under the agreements.

SECTION 13. DEPARTMENT OF HUMAN SERVICES - FUNDING FOR CHILD SUPPORT ENFORCEMENT SERVICES - REPORT TO FIFTY-NINTH LEGISLATIVE ASSEMBLY. The department of human services shall prepare and present a report to the appropriations committees of the fifty-ninth legislative assembly on the department's use of any funds appropriated to the department under section 12 of this Act during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 14. EFFECTIVE DATE. Section 7 of this Act applies to all child support obligations that exist on or after January 1, 2005.

SECTION 15. EXPIRATION DATE. Section 12 of this Act is effective through June 30, 2005, and after that date is ineffective.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2160.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 89 Nays 0 Absent 5

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State