

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2129
(Judiciary Committee)
(At the request of the Department of Human Services)

AN ACT to create and enact subsection 7 to section 12.1-37-01, section 14-09-08.22, a new subdivision to subsection 1 of section 14-09-09.7, section 14-09-09.36, subsection 10 to section 14-09-25, and section 50-09-37 of the North Dakota Century Code, relating to child support enforcement; to amend and reenact subsection 2 of section 14-09-08.1, subsection 3 of section 14-09-08.2, sections 14-09-08.17, 14-09-09, 14-09-09.31, and 14-09-09.33, subsection 2 of section 50-09-02.1, paragraph 2 of subdivision g of subsection 1 of section 50-09-08.2, section 50-09-08.3, subsection 6 of section 50-09-08.6, and subsection 4 of section 50-09-32 of the North Dakota Century Code, relating to child support enforcement; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 7 to section 12.1-37-01 of the North Dakota Century Code is created and enacted as follows:

7. In a prosecution under this chapter, a copy of a record certified under section 14-08.1-08 is admissible as prima facie evidence of the contents of the record.

SECTION 2. AMENDMENT. Subsection 2 of section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Each party subject to the order shall immediately inform the state disbursement unit of the party's:
- (1) Social security number;
 - (2) Residential and mailing addresses and any change of address;
 - (3) Telephone number;
 - (4) Motor vehicle operator's license number;
 - (5) Employer's name, address, and telephone number; and
 - (6) Change of any other condition which may affect the proper administration of this chapter.
- b. ~~The requirements of subdivision a must be incorporated into each~~ Each order for payment of child support must notify each party of the requirements in subdivision a and require the party to provide the information within ten days from the date of the order or ten days after any change in the information.
- c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the court shall deem due process requirements for notice and service to have been met, with respect to the noticed party, by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.

- d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.

SECTION 3. AMENDMENT. Subsection 3 of section 14-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

3. The person to whom the duty of support is owed under either subsection 1 or 2 may file an affidavit with the district court stating that the requirements of subsection 1 are met, the school in which the child is enrolled, and the anticipated date of the child's graduation. Upon filing of the affidavit, the child support ~~continues~~ resumes pursuant to subsection 1 or pursuant to the terms of a judgment or order described in subsection 2. A fee may not be charged for filing such an affidavit.

SECTION 4. AMENDMENT. Section 14-09-08.17 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.17. Delinquent obligor may not renounce claims. An obligor whose child support obligation is delinquent may not renounce, waive, assign, transfer, or disclaim any interest that obligor might otherwise claim in a decedent's estate, a trust, or a similar device, to the extent necessary to satisfy the delinquency. Any attempt to renounce, waive, assign, transfer, or disclaim such an interest is void if attempted after notice of the delinquency is furnished to the person administering the estate, trust, or similar device, and is otherwise voidable.

SECTION 5. Section 14-09-08.22 of the North Dakota Century Code is created and enacted as follows:

14-09-08.22. Enforcement of health insurance coverage from an obligee. When an obligee 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 obligee's employer has been identified, the public authority may use the national medical support notice to enforce the provision of health insurance coverage for the child. When the national medical support notice is used under this section, sections 14-09-08.11, 14-09-08.20, and 26.1-36.5-03 apply unless the context indicates otherwise.

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

14-09-09. Liability of stepparent for support. A stepparent is not bound to maintain the spouse's dependent children, as defined in section 50-09-01, unless the child is received into the stepparent's family. If the stepparent receives them into the family, the stepparent is liable, to the extent of the stepparent's ability, to support them during the marriage and so long thereafter as they remain in the stepparent's family. Such liability may be enforced against the stepparent by any person furnishing necessities to such children. If an order issued under section 14-09-08.10 requires an obligee to provide health insurance coverage, any coverage that is available to the stepparent for the obligee's dependent children is considered to be available to the obligee and is enforceable against the stepparent by a child support agency. If the children are received into the stepparent's family and supported by the stepparent, it is presumed that the stepparent does so as a parent, in which case the children are not liable to the stepparent for their support, nor the stepparent to them for their services. The legal obligation of a natural or adoptive parent to support that person's children is not affected by the liability imposed upon their stepparent by this section.

SECTION 7. A new subdivision to subsection 1 of section 14-09-09.7 of the North Dakota Century Code is created and enacted as follows:

Authorize a rebuttal of the presumption provided in subsection 3 based on the proportionate net income of the obligor and the obligee when the net income of the obligee is at least three times higher than the net income of the obligor.

SECTION 8. AMENDMENT. Section 14-09-09.31 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.31. Child support exempt from process. A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation. This section does not prohibit the public authority from authorizing the state disbursement unit to apply a payment of past-due support owed to an obligee to a child support obligation owed by the same obligee or to another debt being enforced by the North Dakota department of human services that arises out of a public assistance program.

SECTION 9. AMENDMENT. Section 14-09-09.33 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.33. ~~Judicial offset~~ Offsets 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. The public authority may issue an order offsetting past-due child support if neither party objects after being notified of the proposed offset.
4. 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. 5. 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. 6. 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. 7. As used in this section, "child support" does not include spousal support.

SECTION 10. Section 14-09-09.36 of the North Dakota Century Code is created and enacted as follows:

14-09-09.36. Fee for child support services. Any annual fee for child support services imposed by the public authority under section 50-06.3-02 to conform with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.] shall be imposed on the obligee.

The amount of the fee in a case which is being enforced under title IV-D must be less, on an annual basis, than the fee in a case which is not being enforced under title IV-D. Upon order of a court, the amount of the fee paid by the obligee may be collected from the obligor as past-due support.

SECTION 11. Subsection 10 to section 14-09-25 of the North Dakota Century Code is created and enacted as follows:

10. Unless any party to a child support order objects within ten days of the date of a notice sent by first-class mail to the party's last-known address, the public authority or clerk of court may change the payee of a child support obligation for the current month or a future month upon request of a guardian or other person who has legal custody of the child or children for whom the child support is being paid.

SECTION 12. AMENDMENT. Subsection 2 of section 50-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency shall establish a statewide automated data processing system designed to conform to requirements imposed by or under title IV-D. The state agency must make that system available for the use of clerks of court in carrying out their duties under section 14-09-08.1. The official records of the state regarding all child support amounts owed, collected, and distributed must be maintained in that system. Notwithstanding section 14-08.1-05, any record of a child support obligation that is currently being enforced in another jurisdiction and not by a child support agency, or that is owed by an obligor who is deceased, may be removed indefinitely from the statewide automated data processing system until a request is received from a party to the child support case to restore those records.

SECTION 13. AMENDMENT. Paragraph 2 of subdivision g of subsection 1 of section 50-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

- (2) Certain records held by private entities with respect to individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, consisting of:
 - (a) The names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities, including cellular and wireless telephone service providers, and cable television companies; and
 - (b) Information on assets and liabilities on those individuals held by financial institutions;

SECTION 14. AMENDMENT. Section 50-09-08.3 of the North Dakota Century Code is amended and reenacted as follows:

50-09-08.3. Administrative enforcement in interstate cases. In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and county agencies:

1. Shall use high-volume automated administrative enforcement, to the same extent as used in intrastate cases, in response to a request made by another state to enforce a child support order, and shall promptly report the results of such enforcement procedure to the requesting state;
2. May transmit requests, by electronic or other means, to other states for assistance in cases involving enforcement of child support orders which include information provided and intended to enable the receiving state to compare information about the case to information in the data bases of the receiving state, and which constitute a certification:

- a. Of the amount of arrearages, if any, under the child support order; and
- b. That procedural due process requirements applicable to the case have been complied with;
3. In cases in which the state agency receives requests made by another state to enforce a child support order, shall not consider that matter a child support case transferred to this state, but may establish a corresponding case based on the other state's request for assistance; and
4. Shall maintain records of:
 - a. The number of requests for assistance made by other states;
 - b. The number of cases in which this state collected support in response to requests made by other states; and
 - c. The amount of support collected.

For purposes of this section, the term "high-volume automated administrative enforcement" means, in interstate cases, on request of another state, the identification, by this state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in another state, and the seizure of such assets, by this state, through levy or other appropriate processes.

SECTION 15. AMENDMENT. Subsection 6 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

6. In a contest under this section, the court must affirm the action of the state agency to withhold, restrict, or suspend a license unless it finds that the licensee's delinquency or failure to comply with a subpoena, or an existing payment plan was not willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, ~~owes is listed on the arrears in an amount greater than three times the licensee's current or most recent monthly child support obligation or five thousand dollars, whichever is less~~ registry, or is not in compliance with an existing payment plan between the licensee and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.

SECTION 16. AMENDMENT. Subsection 4 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

4. The state agency must develop and maintain a list of the names, addresses, and amounts of past-due support owed by obligors who have been found in contempt of court in this state for failure to comply with a child support order or who have been found guilty of willful failure to pay child support under section 12.1-37-01. Notwithstanding subsections 2 and 3, to the extent permitted by federal law, the state agency must release the list upon request under section 44-04-18. The state agency may remove from the list any obligor who no longer owes past-due support, any obligor who is deceased or whose obligation is being enforced in another jurisdiction, or any obligor whose conviction under section 12.1-37-01 has been expunged.

SECTION 17. Section 50-09-37 of the North Dakota Century Code is created and enacted as follows:

50-09-37. Health insurance data match. An insurer as defined in section 26.1-36.5-01 shall exchange health insurance information with the state agency for the purpose of establishing or enforcing a medical support obligation. An insurer shall provide the health insurance information required in this section to the state agency or its agent not more frequently than twelve times in a year. The insurer shall provide the information required in this section at no cost if the information is in a

readily available structure or format. If the state agency requests the information in a structure or format that is not readily available, the insurer may charge a reasonable fee for providing the information, not to exceed the actual cost of providing the information. The state agency and its agents may not use or disclose any information provided by the insurer under this section except to establish or enforce a child support or medical support obligation, or as otherwise permitted or required by law. An insurer may not be held liable for the release of health insurance information to the state agency or its agents under this section.

SECTION 18. EMERGENCY. Section 17 of this Act is declared to be an emergency measure.

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 Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2129 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 93 Nays 0 Absent 1

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at ___ o'clock _____ M.

Secretary of State