

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1175
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 26.1 and a new section to chapter 50-09 of the North Dakota Century Code, relating to child support enforcement; to amend and reenact subsection 5 of section 14-09-08.2, subsections 1, 2, and 9 of section 14-09-09.3, subsection 3 of section 14-09-09.10, subsections 4 and 5 of section 14-09-09.24, subsection 5 of section 14-09-09.33, subsections 9 and 10 of section 14-09-25, sections 20.1-01-26.1 and 34-15-06, subsection 1 of section 35-34-06, subsection 2 of section 50-09-02.1, subsections 1 and 5 of section 50-09-08.2, subsection 2 of section 50-09-14, and sections 50-09-36 and 50-24.1-02.1 of the North Dakota Century Code and section 12 of chapter 135 of the 2005 Session Laws, relating to child support enforcement; to provide for a task force on child support enforcement; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 14-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

5. This section applies to child support orders concerning children described in subsection 1 or 2, regardless of the date of entry of the order, ~~provided that the affidavit described in subsection 3 is filed not later than ninety days after the child graduates from high school or reaches age nineteen, whichever occurs first.~~

SECTION 2. AMENDMENT. Subsections 1, 2, and 9 of section 14-09-09.3 of the North Dakota Century Code are amended and reenacted as follows:

1. Any ~~failure of an~~ income payer ~~failing~~ to comply with this section or section 14-09-09.16 may be ~~punished for~~ sanctioned as a contempt of court. The court shall first afford such income payer a reasonable opportunity to purge itself of ~~such~~ the contempt.
2. Any income payer who fails or refuses to withhold or deliver income pursuant to an income withholding order, when such income payer has had in its possession such income, is personally liable for the amount of such income which the income payer failed or refused to withhold or deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to withhold or deliver income for more than fourteen business days after the date an obligor is paid, the court shall award damages in an amount equal to two hundred dollars or actual damages caused by the violation, whichever is greater, in addition to the amount of income that should have been withheld or delivered, costs, interest, late fees, and reasonable attorney's fees. Any damages awarded under this subsection must be ~~reduced by the amount of any late fees for the same payment which have been collected by the child support agency under subsection 9 of section 14-09-09.3.~~ Any damages collected by the child support agency under this subsection must be paid allocated by the court between each affected obligor and obligee, or made payable on behalf of an obligor to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. ~~If an income payer has failed to deliver income for more than one obligor, any damages collected under this section must be divided equally among all affected obligors.~~ Each remedy authorized in this subsection is a remedial sanction as defined in section 27-10-01.1.

9. An income payer who fails to withhold or deliver income for more than seven business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five dollars per obligor for each additional business day the payment is delinquent or seventy-five dollars for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be ~~punished~~ sanctioned as a contempt of court. Any late fee ~~collected~~ assessed by the child support agency under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to withhold or deliver income for more than one obligor, any late fees collected under this section must be divided equally among all affected obligors.

SECTION 3. AMENDMENT. Subsection 3 of section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

3. "Child support" means payments for the support of children, including payments for health insurance coverage or other medical support, and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders, and includes past-due support.

SECTION 4. AMENDMENT. Subsections 4 and 5 of section 14-09-09.24 of the North Dakota Century Code are amended and reenacted as follows:

4. A finding that there is good cause not to require immediate income withholding under subsection 2 or 3 must be based on at least:
 - a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
 - b. Proof of timely payment of previously ordered support, if any; and
 - c. A requirement that the obligor keep the ~~clerk and the~~ child support agency informed of any employment-related health insurance to which the obligor has access.
5. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:
 - a. Provides that the obligor shall keep the ~~clerk and the~~ child support agency informed of any employment-related health insurance to which the obligor has access;
 - b. Describes the provisions by which regular payment of child support is assured; and
 - c. Is reviewed and approved by the court and entered into the court's records.

SECTION 5. AMENDMENT. Subsection 5 of section 14-09-09.33 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~Notwithstanding anything to the contrary in section 14-09-09.24 or 14-09-09.30, an~~ Notwithstanding anything to the contrary in section 14-09-09.24 or 14-09-09.30, 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.

SECTION 6. AMENDMENT. Subsections 9 and 10 of section 14-09-25 of the North Dakota Century Code are amended and reenacted as follows:

9. If an obligee is deceased, any past-due child support that is received must be disbursed in the following order:
 - a. As specifically provided in a court order in the event of the obligee's death;
 - b. To the obligee's estate or as provided in the obligee's will;
 - c. To the child or children on whose behalf the payments were made if the child or children are all eighteen years of age or older; ~~or~~
 - d. As directed by the court if one or more of the children to whom the child support is owed is under eighteen years old; or
 - e. Refunded to the obligor if the court determines that the past-due child support cannot be disbursed under this section.
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 child support agency ~~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 7. AMENDMENT. Section 20.1-01-26.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-26.1. Hunting, trapping, or fishing prohibited while privileges are suspended - Penalty. No person may directly or indirectly hunt, trap, or fish or assist in any way in hunting, trapping, or fishing while the person's privileges have been suspended by a court or by the department of human services under section 50-09-08.6. Any person violating this section is guilty of a class A misdemeanor.

SECTION 8. A new section to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Child support insurance data match. Before paying a claim under a contract of insurance issued in this state, an insurer or government self-insurance pool may exchange information about the claimant with the department of human services or its designee. This section applies notwithstanding any provision of law making the information confidential. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith under this section. The court shall award reasonable attorney's fees and costs against any person that commences an action that is subsequently dismissed by reason of the immunity granted by this section.

SECTION 9. AMENDMENT. Section 34-15-06 of the North Dakota Century Code is amended and reenacted as follows:

34-15-06. Recovery of civil money penalties. A civil money penalty assessed under this chapter is payable fifteen days after service on the employer, by first-class mail, of notice of imposition of the civil money penalty. ~~If an order for child support was issued by a court in this state, A judgment against an employer for failure to pay a civil money penalty may be punished enforced as a contempt of court by the court that issued an order for child support imposed upon a newly hired employee whose hiring was not reported timely, completely, and correctly. If an order for child support was issued by a court or administrative tribunal in another state or if there is no current order for child support for the employee, failure to pay a civil money penalty may be punished as a contempt of court by any court of this state with jurisdiction over the employer.~~

SECTION 10. AMENDMENT. Subsection 1 of section 35-34-06 of the North Dakota Century Code is amended and reenacted as follows:

1. In the case of personal property that does not consist of a vehicle, a vessel, or an account maintained in a financial institution, the child support agency may establish a lien on such personal property by filing a notice of lien with the office of the recorder in the county in which the personal property may be found ~~or~~, with the secretary of state, or with a third party who is in possession of the personal property. The notice must particularly describe the property to be subjected to the lien and the name and last-known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.

SECTION 11. 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, or that is owed to a deceased obligee for whom disbursement of any collections could not occur under section 14-09-25, 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 12. AMENDMENT. Subsections 1 and 5 of section 50-09-08.2 of the North Dakota Century Code are amended and reenacted as follows:

1. In implementing programs under title IV-D, the state agency, and the officials, employees, and agents of the agency may:
 - a. Conduct examinations;
 - b. Require by subpoena the attendance of witnesses and the production of books, records, and papers;
 - c. Compensate witnesses and individuals producing books, records, including records maintained in automated data bases, and papers in amounts determined by the state agency, not to exceed actual reasonable costs incurred and not to include any costs incurred by a financial institution that has not entered into an agreement under subdivision h nor costs incurred by any person that reflects the difference between responding to a subpoena and providing information under subdivision g or k;
 - d. Impose a fiscal sanction of no more than twenty-five dollars for each day against a person who fails to attend as a witness or produce books, records, or papers;
 - e. Require genetic testing of appropriate individuals when necessary in disputed paternity cases, to determine the relationship of parent and child, and:
 - (1) Pay the costs of such testing, subject to recoupment from the alleged father if paternity is established; and
 - (2) Obtain additional testing in any case if an initial test result is contested, upon request and advance payment by the contestant;
 - f. Make application to the district court to compel participation in genetic testing, the attendance of witnesses, the production of books, records, and papers, and the payment of fiscal sanctions imposed under this section;

- g. Notwithstanding any provision of ~~law~~ this code making the records confidential, in addition to or in lieu of a subpoena, obtain access, including automated access in the case of records maintained in automated data bases, to:
- (1) Records of other state and local government agencies, including:
 - (a) Vital statistics, including records of marriage, birth, and divorce;
 - (b) Local tax and revenue records, including information on residence address, employer, income, and assets;
 - (c) Records concerning real and titled personal property;
 - (d) Records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;
 - (e) Employment security records;
 - (f) Workforce safety and insurance records identifying the last-known address of a person who owes or who is owed support, the wage-loss benefits, permanent partial impairment benefits, death benefits, or additional benefits that person has received or is entitled to receive from the organization, and whether and where that person is currently employed;
 - (g) Records of all agencies administering public assistance programs;
 - (h) Records of the department of transportation, which access is not subject to the requirements in section 39-16-03;
 - (i) Corrections records;
 - (j) Law enforcement records; and
 - (k) Subject to an agreement with the state tax commissioner, state tax and revenue records, including information on residence address, employer, income, and assets; and
 - (2) Certain information contained in 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, subject to safeguards on privacy and information security, consisting of:
 - (a) The names ~~and~~, addresses, social security numbers, and other requested relevant income or asset information 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, pursuant to an administrative subpoena if requested; and
 - (b) Information on assets and liabilities on those individuals held by financial institutions;
- h. Enter into agreements with financial institutions doing business in the state, and with the assistance, or through the agency, of the secretary, with financial institutions doing business in two or more states:

- (1) To develop and operate, in coordination with those financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide in each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such financial institution and who owes past-due support, as identified by the state agency by name and social security number or other taxpayer number; and
 - (2) Under which such financial institution, in response to a notice of lien or an execution, will encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for unpaid child support;
 - i. For purposes of locating parents or alleged parents of children receiving services under title IV-D, provide all federal and state agencies conducting activities under title IV-D with access to:
 - (1) Records of the department of transportation; and
 - (2) Law enforcement records; ~~and~~
 - j. Notwithstanding any provision of law making the records confidential:
 - (1) Provide access to information identifying the amount of payment necessary to obtain the release of a lien taken by the state agency in any property to secure the payment of child support; and
 - (2) Upon payment of a sufficient amount, satisfy and release that lien; and
 - k. Upon agreement, exchange information, including social security numbers, with a person listed in subdivision g for the purpose of identifying individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, and any income, assets, or liabilities of those individuals.
5. All employing or contracting entities within this state, including for-profit, nonprofit, and governmental employers, shall provide information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor within ten days of a request made under subsection 1 or made by the agency of any other ~~state~~ jurisdiction charged with administration of programs under title IV-D. An entity that receives a request for which a response is required by this section is subject to a fiscal sanction of twenty-five dollars for each day, beginning on the eleventh day after the request is made and not complied with.

SECTION 13. AMENDMENT. Subsection 2 of section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter 53-12.1 to establish or enforce a child support order may seek review of the action in the court of this state which issued or considered the child support order. If an order for child support was issued by a court or administrative tribunal in another ~~state~~ jurisdiction, any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter 53-12.1 to enforce that order may seek review of the action in any court of this state which has jurisdiction to enforce that order, or if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the necessary parties. Any review sought under this subsection must be commenced within

thirty days after the date of action for which review is sought. A person who has a right of review under this subsection may not seek review of the actions in a proceeding under chapter 28-32.

SECTION 14. AMENDMENT. Section 50-09-36 of the North Dakota Century Code is amended and reenacted as follows:

50-09-36. Protest period. Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 ~~or~~, 50-09-35, or section 15 of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

SECTION 15. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Report of gambling winnings. Before a gaming operator makes a payment of winnings for which the gaming operator is required to file an internal revenue service form W-2G or substantially equivalent form, the gaming operator shall obtain the name, address, and social security number of the winner and submit the information to the state agency through a secure interactive website that is maintained by the state agency. If the state agency replies to the gaming operator that the winner does not owe past-due support or if the gaming operator is unable to receive information from the state agency after attempting in good faith to do so, the gaming operator may make the payment to the winner. If the state agency replies that the winner owes past-due support, the reply must include the amount of past-due support owed by the winner and the location of the office with which the winner may file a protest under section 50-09-14. The gaming operator shall withhold from the payment to the winner an amount equal to the total winnings or the amount of past-due support, whichever is less. Within seven business days after withholding the payment, the gaming operator shall send the amount withheld to the state disbursement unit, along with the name, address, and social security number of the winner. The gaming operator may withhold and retain an additional sum of three dollars from the winner to cover expenses involved in sending the payment. A gaming operator that withholds funds 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 and is immune from suit or liability for complying with this section.

SECTION 16. AMENDMENT. Section 50-24.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.1. Assignment of claim.

1. Each applicant or recipient of benefits under this chapter must be deemed to have assigned, to the department of human services, any right of recovery the applicant or recipient may have for medical costs incurred under this chapter not exceeding the amount of funds expended by the department for the care and treatment of the applicant or recipient. The applicant or recipient, or other person empowered by law to act in the applicant's or recipient's behalf, shall execute and deliver an assignment of claim, assignment of rights, or other authorizations as necessary to secure fully the right of recovery of the department. The assignment:
 - 1- a. Is effective as to both current and accrued medical support recovery obligations.
 - 2- b. Takes effect upon a determination that an applicant is eligible for assistance under this chapter.
2. The department of human services may compromise claims arising out of assignments made under this section on such terms as it may deem just and appropriate. The department of human services may not be compelled to compromise any claim.

SECTION 17. AMENDMENT. Section 12 of chapter 135 of the 2005 Session Laws is amended and reenacted as follows:

SECTION 12. TRANSITION. A proceeding to adjudicate parentage which was commenced before the effective date of this chapter is governed by the law in effect at the time the proceeding was commenced. A complaint or motion to adjudicate parentage that is filed with the court after August 1, 2009, is governed by this chapter even if the proceeding was commenced prior to August 1, 2009.

SECTION 18. CHILD SUPPORT ENFORCEMENT TASK FORCE. The department of human services shall convene a child support enforcement task force to study the interaction of the business community and the child support enforcement program. The task force must include two members of the legislative assembly appointed by the chairman of the legislative council. The department shall extend invitations to representatives from the financial and insurance industries, employers, public utilities, and other business interests. The study must include strategies for encouraging voluntary participation in electronic data matches, the feasibility and desirability of mandatory data matches or mandatory electronic transfer of information, the identification of potential sources of income and asset information regarding child support obligors, the creation of a lien registry for property owned by a delinquent child support obligor, and the development of procedures for conducting data matches that are secure and limited to the information needed to assist in the establishment and enforcement of child support and medical support orders. The department of human services shall present the findings and recommendations of the task force, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

SECTION 19. EFFECTIVE DATE. Sections 14 and 15 of this Act become effective on July 1, 2010.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1175.

House Vote: Yeas 89 Nays 3 Absent 2

Senate Vote: Yeas 46 Nays 1 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State