

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2107
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 14-09-08.10, 14-09-09.26, and 14-09-09.33, subsection 1 of section 14-09-09.34, sections 14-20-18 and 34-15-01, subsection 1 of section 34-15-03, and section 34-15-04 of the North Dakota Century Code, relating to child support and paternity; to repeal section 14-09-08.15 of the North Dakota Century Code, relating to medical support; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-08.10 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.10. (Contingent effective date - See note) Order.

Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for health insurance coverage for that child.

1. Except as provided in subsection 2, the order must require the obligor to provide satisfactory health insurance coverage whenever that coverage is available at reasonable cost or becomes available at reasonable cost.
2. If the obligee is an individual with physical custody of the child, the obligee must be required to provide satisfactory health insurance whenever that coverage is available at no or nominal cost.

(Contingent effective date - See note) Order. Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for the child's health insurance coverage or other medical support. Responsibility for the child's health insurance coverage or other medical support must be established according to rules adopted by the child support agency. To the extent permitted by federal law and rules promulgated by the secretary of the United States department of health and human services, the rules adopted under this section must ~~be based on~~include a reasonable cost standard which considers the income of the obligated parent and ~~include a limitation on the obligation of a low-income parent to provide medical support unless the cost of health insurance coverage is available to the parent at no or nominal cost.~~ The order must require the obligated party to provide satisfactory health insurance coverage whenever that coverage is accessible to the child, as defined by the child support agency, and available at reasonable cost or becomes accessible and available at reasonable cost. To assist a court in identifying appropriate health insurance coverage under this section, the child support agency may publish a list of child-only health insurance policies for children who are not eligible for public health coverage under chapter 50-29. To the extent permitted by federal law and rules promulgated by the secretary of the United States department of health and human services, the rules adopted by the child support agency under this section may not impair a child's ability to apply for and receive public health coverage under chapter 50-29.

SECTION 2. AMENDMENT. Section 14-09-09.26 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.26. State is real party in interest.

The state is a real party in interest for purposes of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify, or enforce an order for support of a child in any of the following circumstances:

1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
2. Whenever application is made and accepted under ~~section 14-09-08.9 or 14-09-08.13~~ for services provided by the child support agency.
3. Whenever duties are imposed on the state or its public officials under chapter 14-12.2.

SECTION 3. AMENDMENT. Section 14-09-09.33 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.33. 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 or other debts owed to the obligor by the obligee. An order for an offset is permitted under this subsection ~~only if:~~
 - a. ~~Theas long as 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, except as authorized in subsection 4, and 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.~~
- 3.2. ~~The child support agency may issue an order offsetting past-due~~ offset child support if neither party objects after being notified of the proposed offset.
- 4.3. ~~Past-due child~~ 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.
- 5.4. 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, or as authorized by the child support agency under subsection 2, or as permitted in the child support guidelines established under section 14-09-09.7.~~
- 6.5. 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.
7. ~~As used in this section, "child support" does not include spousal support.~~

SECTION 4. AMENDMENT. Subsection 1 of section 14-09-09.34 of the North Dakota Century Code is amended and reenacted as follows:

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 child support agency before making any lump sum payment of one thousand dollars or more to the obligor and may report a lump sum payment of an amount less than one thousand dollars or of an amount yet to be determined. "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, severance pay, or advances, and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.

SECTION 5. AMENDMENT. Section 14-20-18 of the North Dakota Century Code is amended and reenacted as follows:

14-20-18. (308) Challenge after expiration of period for rescission.

1. After the period for rescission under section 14-20-17 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:
 - a. On the basis of fraud, duress, or material mistake of fact; and
 - b. Within one year two years after the acknowledgment or denial is filed with the state department of health.
2. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

SECTION 6. AMENDMENT. Section 34-15-01 of the North Dakota Century Code is amended and reenacted as follows:

34-15-01. Definitions.

As used in this chapter:

1. "Date of hire" means the date services for remuneration were first performed by the employee.
2. "Department" means the department of human services.
- ~~2-3.~~ "Employee" means an individual who would be determined to be an employee under chapter 24 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401 et seq.], but does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting under this chapter, with respect to that employee, could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
4. "Employee newly hired" means an employee who has not previously been employed by the employer or was previously employed by that employer but has been separated from such prior employment for at least sixty consecutive days.
- ~~3-5.~~ "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.
- ~~4-6.~~ "Labor organization" means an organization treated as a labor organization under section 2(5) of the National Labor Relations Act, as amended [29 U.S.C. 152(5)], and includes any entity, including a "hiring hall", which is used by the organization and an employer to carry out

requirements, described in section 8(f)(3) of the National Labor Relations Act, as amended [29 U.S.C. 158(f)(3)], of an agreement between the organization and the employer.

SECTION 7. AMENDMENT. Subsection 1 of section 34-15-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsections 2 and 3, each employer shall furnish to the directory of new hires a report that contains the name, address, and social security number of each employee newly hired for work within this state, the date of hire, whether the employer offers health insurance to the employee, and the employer's name and address and the identifying number assigned under section 6109 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 6109], to the employer.

SECTION 8. AMENDMENT. Section 34-15-04 of the North Dakota Century Code is amended and reenacted as follows:

34-15-04. Reporting format.

1. Each employer report required by this chapter must be made, to the extent practicable, on a W-4 form or an equivalent form prescribed by the state directory of new hires.
2. Except as provided in subsection 3, the report may be transmitted by first-class mail or by any magnetic or electronic means readable by the department, including facsimile transmission, electronic mail, modem transmission, or other means of electronic communication.
3. An employer that employs more than twenty-four employees at any time must report new hires through an ~~internet-based~~electronic method provided by the department. An employer that does not comply with this subsection is deemed to have failed to report new hires under section 34-15-05. The department may waive, upon a showing of good cause, the requirement to report new hires electronically.

SECTION 9. REPEAL. Section 14-09-08.15 of the North Dakota Century Code is repealed.

SECTION 10. EFFECTIVE DATE. Sections 1 and 9 of this Act become effective on the date the department of human services certifies to the legislative council as the effective date of rules adopted to implement this Act. Sections 6, 7, and 8 of this Act become effective on October 1, 2013.

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 Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2107.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State