Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1111
(Judiciary Committee)
(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to the person who is allowed to claim the tax deduction for a child under a child support order; to amend and reenact section 14-09-08.2, subsections 1 and 3 of section 14-09-08.4, sections 14-09-08.5, 14-09-08.6, 14-09-08.7, 14-09-08.11, 14-09-08.13, 14-09-09.30, 35-34-04, 35-34-06, and 50-09-06.1 of the North Dakota Century Code, and section 73 of chapter 152 of the 2009 Session Laws, relating to child support; to repeal section 14-09-08.8 of the North Dakota Century Code, relating to motions to amend child support; to provide for a report to the legislative management; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

14-09-08.2. Support for children after majority - Retroactive application.

1. A judgment or order requiring the payment of child support until the child attains majority continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:

   a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and

   b. The child resides with the person to whom the duty of support is owed.

2. A judgment or order may require payment of child support after majority under substantially the circumstances described in subsection 1.

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 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.

4. The clerk of court shall serve the affidavit by first-class mail upon the person owing the duty of support. If at any time thereafter the person owing the duty of support files a motion with the court, supported by that person's affidavit that the child is no longer enrolled in or attending high school, the court shall determine if the child is enrolled in and attending high school and shall enter an order accordingly.

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.

6. This section does not preclude the entry of an order for child support which continues after the child reaches age eighteen, if the parties agree, or if the court determines the support to be appropriate.

7. For purposes of this section~~, a~~:

a. A child is treated as being in school during summer vacation if the child was enrolled in and attending school and did not graduate from high school at the end of the school period immediately preceding the summer vacation; and

b. A child who is currently enrolled in school is not considered to have graduated, even if all required coursework and examinations have been completed, until the ceremony is held by the school to commemorate the child's graduation.

SECTION 2. AMENDMENT. Subsections 1 and 3 of section 14-09-08.4 of the North Dakota Century Code are amended and reenacted as follows:

1. Each child support order being enforced by the child support agency must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:

   a. In the case of an order with respect to which there is in effect an assignment under chapter 50-09, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; ~~or~~

   b. In the case of any other order neither the obligor nor the obligee has requested review; or

   c. In the case of a review requested by the obligor, the obligor failed to provide information required under subsection 1 of section 14-09-08.6 with the request for review.

3. If, upon review, the child support agency determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required by those guidelines, the child support agency shall seek an amendment of the order.

SECTION 3. AMENDMENT. Section 14-09-08.5 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.5. Notice of ~~periodic~~ review of child support orders.

1. The child support agency shall provide written notice, including notice through electronic means, to the obligee and the obligor that a ~~child support order being enforced by the child support agency may be subject to~~ review under section 14-09-08.4~~. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency, at least thirty-five days before the commencement of the review~~ is commencing.

2. ~~The~~Unless sufficient information was previously provided by the obligor with a request for review, the notice to the obligor must inform the obligor of the duty to furnish the information required by section 14-09-08.6 and that a failure to furnish the required information may result in the entry of an order compelling the furnishing of the information. ~~The notice must also inform the obligor that the review determination will be mailed to the obligor following the review.~~ The notice must be accompanied by an income report form, together with instructions for the accurate completion of the income report form.

SECTION 4. AMENDMENT. Section 14-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.6. Obligor's duties upon review - Failure to provide information.

~~1.~~ ~~The~~Unless sufficient information was previously provided by the obligor with a request for review, the obligor shall provide information to the child support agency concerning the obligor's income, which is sufficient to accomplish the review, ~~no later than five working days before the date of review~~by the date required by the child support agency. The information must be furnished by providing ~~an~~:

1. An income report, in the form and manner required by the child support agency, accurately completed and attested to by the obligor~~, earnings~~;

2. Earnings statements secured from the obligor's current income payer if the obligor changed employment after the end of the latest income tax year for which the obligor filed a return~~, and providing:~~; and

~~a.~~3. A verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review~~; or~~

~~b. A written authorization by which the child support agency may secure a verified copy of the latest income tax return filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.~~

~~2. If the obligor has not produced information under subsection 1 concerning the obligor's income, sufficient to accomplish the review, the child support agency may base its review determination on the assumption that the obligor's income has increased at the rate of ten percent per year since the child support order under review was entered or last modified~~.

SECTION 5. AMENDMENT. Section 14-09-08.7 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.7. Notice of review determination.

1. Following review, the child support agency shall promptly provide ~~written~~ notice of its review determination ~~on review. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency~~.

2. If the child support agency has made a determination ~~that no~~not to seek an amendment to the amount of child support ~~should be sought~~, the notice must inform the obligor and the obligee of the right of each to challenge that determination by seeking an amendment to the amount of child support, from the court, at any time before the termination of the support order.

3. If the child support agency has made a determination to seek an amendment ~~in~~to the amount of child support, the notice must ~~be mailed at least thirty-five days before the date of a hearing on a motion for amendment made by the child support agency under section 14-09-08.4 and must~~ inform the obligor and the obligee of the opportunity of each to consent to the proposed amendment and the right of each to challenge that determination by opposing that amendment before the court. ~~The notice to the obligor must be accompanied by:~~

~~a. A proposed modification of the child support order to provide for payment of child support in the amount required under the child support guidelines;~~

~~b. A document by which the obligor may consent to the proposed modification; and~~

~~c. An address and telephone number that the obligor may use to receive information from or schedule a meeting with representatives of the child support agency.~~

SECTION 6. AMENDMENT. Section 14-09-08.11 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.11. (Contingent effective date - See note) Eligible child - Employer to permit enrollment - Employer duties and liabilities - Obligor contest.

1. When an obligor is required to cover a child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor. If health insurance coverage required under section 14-09-08.10 is available through an employer, the 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. Upon receipt of the national medical support notice issued under section 14-09-08.20:

      (1) Comply with the provisions of the national medical support notice; and

      (2) 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 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;

   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 insurer;

   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 child support agency, in the same manner as required under subsection 9 of section 14-09-09.16, whenever the obligor's employment is terminated.

2. 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~~The withholding provided in subdivision e of subsection 1 has priority over any other legal process against the same income except that withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the 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 employer must promptly inform the child support agency 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.

(Contingent effective date - See note) Eligible child - Employer to permit enrollment - Employer duties and liabilities - Obligor contest.

1. When an obligor is required to cover a child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor. If health insurance coverage required under section 14-09-08.10 is available through an employer, the 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. Upon receipt of the national medical support notice issued under section 14-09-08.20:

      (1) Comply with the provisions of the national medical support notice; and

      (2) 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 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;

   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 insurer;

   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 child support agency, in the same manner as required under subsection 9 of section 14-09-09.16, whenever the obligor's employment is terminated.

2. 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. Unless otherwise provided by the child support agency in compliance with rules promulgated by the secretary of the United States department of health and human services, the withholding provided in subdivision e of subsection 1 has priority over any other legal process against the same income, except that withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the 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 employer must promptly inform the child support agency 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 7. AMENDMENT. Section 14-09-08.13 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.13. Application for service.

The child support agency shall take ~~necessary~~the appropriate steps to implement, modify, and enforce an order for dependent health insurance or other medical support whenever the children receive benefits through temporary assistance for needy families or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or ~~upon~~whenever application ~~of the obligee to the child support agency and payment by the obligee of any required application fee~~is made and accepted for services provided by the child support agency.

SECTION 8. 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.

1. If there is a current monthly support obligation, the total amount of child support due in each month for purposes of income withholding is the sum of the obligor's current monthly support obligation; and

   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 equal to twenty percent of the obligor's current monthly support obligation; or

2. If there is no current monthly support obligation, the total amount of child support due in each month for purposes of income withholding is:

   a. ~~An~~Unless either subdivision b or c applies, 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~~or, if no order to repay an arrearage exists, an amount equal to twenty percent of the obligor's most recent monthly support obligation, if 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.

3. The total amount of child support due in each month under this section for purposes of income withholding may be increased at the request of the obligor to repay an arrearage or by agreement with the child support agency.

SECTION 9. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Allocation of tax exemption for the child.

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 identify the person who is authorized to claim the child as a dependent for purposes of filing an income tax return.

SECTION 10. AMENDMENT. Section 35-34-04 of the North Dakota Century Code is amended and reenacted as follows:

35-34-04. (Effective through July 31, 2015, or see note) Vessel lien.

1. In the case of a vessel, the child support agency may file a notice of lien with the secretary of state if the value of the vessel is estimated to be at least twice the cost of establishing the lien. The notice must contain a description of the make, model designation, and serial number of the vessel, including its identification or registration number, if any, 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.

2. Upon filing of the notice of lien in accordance with this section, the notice of lien must be indexed by the secretary of state in the central indexing system and may be enforced and foreclosed in the same manner as a security agreement under the provisions of title 41.

3. The secretary of state shall remove and destroy the lien notification statement in the same manner as provided for other liens in section 11-18-14 for the recorder.

4. The child support agency may file an amendment to correct the spelling of the obligor's name or to correct or change the address of the obligor.

(Effective after July 31, 2015, or see note) Vessel lien.

1. In the case of a vessel, the child support agency may ~~file~~establish a lien by filing electronically a notice of lien in the central indexing system if the value of the vessel is estimated to be at least twice the cost of establishing the lien. The notice must contain a description of the make, model designation, and serial number of the vessel, including its identification or registration number, if any, and the name, social security number, 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.

2. Upon filing of the notice of lien in accordance with this section, the notice of lien must be indexed in the central indexing system and may be enforced and foreclosed in the same manner as a security agreement under the provisions of title 41.

3. The secretary of state shall remove and destroy the lien notification statement in the same manner as provided for other liens in section 11-18-14 for the recorder.

4. A lien under this section is perfected when notice of the lien is filed with the secretary of state.

5. The child support agency may file electronically an amendment to correct the spelling of the obligor's name, to correct the obligor's social security number, or to correct or change the address of the obligor.

SECTION 11. AMENDMENT. Section 35-34-06 of the North Dakota Century Code is amended and reenacted as follows:

35-34-06. (Effective through July 31, 2015, or see note) Lien on other personal property.

1. In the case of untitled personal property other than 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, 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.

2. The information filed with a recorder or with the secretary of state under this section must be included in the computerized central indexing system maintained by the secretary of state under section 54-09-09 and must be accessible to the public on the same terms and conditions that apply to access other statutory lien information maintained in the computerized central indexing system.

3. Upon filing of the notice of lien in accordance with this section, the lien attaches to and is perfected against all personal property described in the notice.

(Effective after July 31, 2015, or see note) Lien on other personal property.

1. In the case of untitled personal property other than a vessel or an account maintained in a financial institution, the child support agency may establish a lien on such personal property by filing electronically a notice of lien in the central indexing system 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.

2. The information filed under this section must be included in the computerized central indexing system maintained by the secretary of state under section 54-09-09 and must be accessible to the public on the same terms and conditions that apply to access other statutory lien information maintained in the computerized central indexing system.

3. Upon filing of the notice of lien in accordance with this section, the lien attaches to and is perfected against all personal property described in the notice.

SECTION 12. AMENDMENT. Section 50-09-06.1 of the North Dakota Century Code is amended and reenacted as follows:

50-09-06.1. Assignment of support rights.

An application under this chapter is deemed to create and effect an assignment of all rights to support, which a family member or foster child may have or come to have, to the state agency. The assignment:

1. Is effective as to all current ~~and accrued~~ support obligations and periods of eligibility;

2. Is effective as to all accrued support obligations with respect to a foster care child;

3. Is limited to the total cost of benefits provided to the family or foster child;

~~3.~~4. Terminates when eligibility ceases, except with respect to any support obligation unpaid at that time; and

~~4.~~5. Is not effective as to any child subject to a benefit cap imposed under section 50-09-29.

SECTION 13. AMENDMENT. Section 73 of chapter 152 of the 2009 Session Laws is amended and reenacted as follows:

SECTION 73. ~~CONTINGENT~~ EFFECTIVE DATE. This Act becomes effective on ~~the date the department of human services certifies to the legislative council that the Hague convention on the international recovery of child support and other forms of family maintenance is ratified and that the United States deposited its instrument of ratification~~July 1, 2015.

SECTION 14. REPEAL. Section 14-09-08.8 of the North Dakota Century Code is repealed.

SECTION 15. DEPARTMENT OF HUMAN SERVICES REPORT TO LEGISLATIVE MANAGEMENT. The department of human services shall provide a report to the legislative management before July 1, 2016, regarding the number of revoked obligor driver's licenses, the duration and effectiveness of revocations, including a comparison of the state's driver's license revocation with other rural states; and shall present a specific proposal that may limit the use of revocation of driver's licenses as a tool of enforcement.

SECTION 16. EMERGENCY. Section 13 of this Act is declared to be an emergency measure.

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-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1111 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 88 Nays 4 Absent 2

Speaker of the House

Chief Clerk of the House

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

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at 12:27 P.M. on April 14, 2015.

Approved at 10:16 A.M. on April 15, 2015.

Governor

Filed in this office this 15th day of April, 2015,

at 2:49 o'clock P M.

Secretary of State