

Fifty-eighth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2246**

Introduced by

Senators Fischer, Heitkamp, J. Lee

Representatives Delmore, D. Johnson, Wieland

1 A BILL for an Act to create and enact a new subsection to section 14-09-09.3 and a new  
2 section to chapter 50-09 of the North Dakota Century Code, relating to late fees charged to a  
3 child support income payer and the withholding, restriction, or suspension of licenses, permits,  
4 and registrations for failure to pay child support or comply with a subpoena; and to amend and  
5 reenact subsection 3 of section 14-09-08.1, subsection 2 of section 14-09-08.16, subsection 2  
6 of section 14-09-09.3, and subsection 6 of section 14-09-25 of the North Dakota Century Code,  
7 relating to notice of child support arrears, duties and responsibilities of a child support income  
8 payer, and judgment interest for past-due child support.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1. AMENDMENT.** Subsection 3 of section 14-09-08.1 of the North Dakota  
11 Century Code is amended and reenacted as follows:

12 3. Whenever there is failure to make the payments as required, the clerk of court shall  
13 send notice of the arrears by first-class mail, with affidavit of service, to the person  
14 required to make the payments, or request a district judge of the judicial district to  
15 issue a citation for contempt of court against the person who has failed to make the  
16 payments and the citation must be served on that person as provided by the North  
17 Dakota Rules of Civil Procedure. The clerk of court may delay sending a notice of  
18 arrears or request for a citation for contempt of court under this section if a notice  
19 has been mailed to the obligor under section 6 of this Act.

20 **SECTION 2. AMENDMENT.** Subsection 2 of section 14-09-08.16 of the North Dakota  
21 Century Code is amended and reenacted as follows:

22 2. Within ten days after receipt of a request for information issued under subsection 1,  
23 an income ~~payer~~ payer shall provide the requester with a written statement  
24 informing the requester whether or not the income ~~payer~~ payer is, or within the

1 ~~thirty~~ one hundred eighty days immediately preceding receipt of the request has  
2 been, an income ~~payer~~ payer with respect to that obligor. If the income ~~payer~~  
3 payer is, or within the previous ~~thirty~~ one hundred eighty days has been, an  
4 income ~~payer~~ payer with respect to that obligor, the income ~~payer~~ payer shall  
5 furnish information to the requester including:  
6 a. The amount of any income currently paid to the obligor, calculated on a  
7 monthly basis;  
8 b. The total amount of income paid to the obligor in the twelve months preceding  
9 the month in which the request is received;  
10 c. Information regarding any health insurance that may be made available to the  
11 obligor's children through the income ~~payer~~ payer;  
12 d. The social security number under which payment of any income by the  
13 income ~~payer~~ payer to the obligor is reported;  
14 e. The obligor's address; and  
15 f. If the income ~~payer~~ payer is no longer an income ~~payer~~ payer with respect to  
16 that obligor, the date of last payment and any forwarding address.

17 **SECTION 3. AMENDMENT.** Subsection 2 of section 14-09-09.3 of the North Dakota  
18 Century Code is amended and reenacted as follows:

- 19 2. Any income ~~payer~~ payer who fails or refuses to deliver income pursuant to an  
20 income withholding order, when such income ~~payer~~ payer has had in its  
21 possession such income, is personally liable for the amount of such income which  
22 the income ~~payer~~ payer failed or refused to deliver, together with costs, interest,  
23 and reasonable attorney's fees. If an income payer fails or refuses to deliver  
24 income for more than fourteen business days after the date an obligor is paid, the  
25 court shall award damages in an amount equal to five hundred dollars or actual  
26 damages caused by the violation, whichever is greater, in addition to costs,  
27 interest, late fees, and reasonable attorney's fees. Any damages collected by the  
28 public authority under this subsection must be paid to the state disbursement unit  
29 for distribution under section 14-09-25 and any remaining balance must be paid to  
30 the obligor. If an income payer has failed to deliver income for more than one  
31 obligor, any damages collected under this section must be divided equally among

1           all affected obligors. Each remedy authorized in this subsection is a remedial  
2           sanction as defined in section 27-10-01.1.

3           **SECTION 4.** A new subsection to section 14-09-09.3 of the North Dakota Century Code  
4 is created and enacted as follows:

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

18           **SECTION 5. AMENDMENT.** Subsection 6 of section 14-09-25 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20           6. Notwithstanding section 28-20-36, the state disbursement unit shall disburse  
21           collected child support payments in conformity with title IV-D of the Social Security  
22           Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.]. Any disbursement  
23           made in error is not a gift and must be repaid. The public authority may take any  
24           action not inconsistent with law to secure repayment of any disbursement made in  
25           error. Interest accrued on an unpaid child support obligation is child support. To  
26           the extent consistent with the requirements of title IV-D, a payment received with  
27           respect to a child support arrearage must first be applied to accrued interest on the  
28           earliest arrearage, and then to the principal of that arrearage. The public authority  
29           may calculate judgment interest accrued ~~only~~ on child support obligations that first  
30           became arrearages after July 1, 2002. The public authority shall enter in its  
31           records judgment interest on child support obligations that first became arrearages

on or before July 1, 2002, for periods before January 1, 2004, only if a court has ordered the interest amount calculated by some individual or entity other than the public authority and approved the calculated amount. For child support obligations that first became arrearages on or before July 1, 2002, the public authority may calculate judgment interest accrued only for periods on or after January 1, 2004. For purposes of this subsection, arrearage means an unpaid child support obligation that was due in a month prior to the current month.

**SECTION 6.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey subpoena.**

1. As used in this section:

a. "License" means:

- (1) Any certificate, permit, or license issued by an agency of the state or a political subdivision of the state which the obligor is required to obtain prior to engaging in the obligor's occupation or profession;
- (2) Any certificate, permit, or license issued by lottery or by tag which the obligor is required to obtain prior to engaging in a recreational activity;  
and
- (3) Any operator's license or vehicle license or registration which the obligor is required to obtain prior to operating or owning a vehicle in this state. As used in this section, "vehicle" includes any motor vehicle as defined in section 39-01-01, aircraft, snowmobile, motorboat, or personal watercraft.

b. "Licensee" means a person who has applied for or currently possesses a license.

c. "Licensing authority" means an agency of the state or a political subdivision of the state that issues a license, including occupational or professional boards, the game and fish department, and the department of transportation.

- 1           2.   The state agency, directly or through agents and child support agencies, may  
2               withhold, restrict, or suspend one or more licenses issued to:
  - 3               a.   A person who has failed, after receiving proper notice, to comply with a  
4               subpoena relating to a paternity or child support matter;
  - 5               b.   An obligor who is in arrears in child support in an amount greater than three  
6               times the obligor's current or most recent monthly child support obligation or  
7               five thousand dollars, whichever is less; or
  - 8               c.   An obligor who is not in compliance with an existing payment plan that has  
9               been negotiated between the obligor and the state agency under this section.
- 10          3.   Before withholding, restricting, or suspending a license under this section, the state  
11               agency shall send a notice to the licensee by first-class mail to the licensee's  
12               last-known address stating that the licensee has thirty days after the date of the  
13               notice to comply with the subpoena, satisfy the arrearage in full, or negotiate a  
14               payment plan with the state agency under this section. The notice must further  
15               state that the licensee may contest the action of the state agency by making a  
16               written request for a court hearing to the state agency within ten days of the date of  
17               the notice.
- 18          4.   Upon request for a hearing under this section, the state agency shall petition the  
19               court that issued or considered the child support order for an order authorizing the  
20               state agency to withhold, restrict, or suspend one or more licenses issued to the  
21               licensee. If a child support order was issued by a court or administrative tribunal in  
22               another jurisdiction, the hearing may be held in any court of this state which has  
23               jurisdiction to enforce that order or, if no court of this state has jurisdiction to  
24               enforce that order, in any court of this state with jurisdiction over the licensee.
- 25          5.   The court shall authorize the state agency to withhold, restrict, or suspend a  
26               license only if it finds that the licensee's failure to comply with a subpoena, a child  
27               support order, or an existing payment plan was willful. Upon a showing by the  
28               state agency that the licensee has failed to comply with a subpoena, owes arrears  
29               in an amount greater than three times the obligor's current or most recent monthly  
30               child support obligation or five thousand dollars, whichever is less, or is not in  
31               compliance with an existing payment plan between the obligor and the state

agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.

6. The state agency shall notify the appropriate licensing authority that the state agency has withheld, restricted, or suspended a license under this section. A license that is withheld, restricted, or suspended by the state agency under this section may be reinstated only by the state agency after the licensee complies with the subpoena, satisfies the arrearage in full, or enters into a payment plan with the state agency under this section.

7. An obligor and the state agency may enter into a payment plan under which the obligor agrees to satisfy the obligor's total child support obligation, including arrears, within a period not to exceed ten years. A payment plan under this section must require the obligor to make an immediate payment to the state disbursement unit in an amount equal to five percent of the total arrears owed by the obligor or five hundred dollars, whichever is greater. The state agency may waive or reduce the immediate payment that is due under a payment plan if the obligor's current or most recent monthly support obligation is less than five hundred dollars. The state agency may require that a payment plan under this section include satisfaction of all court-ordered child support obligations of the obligor. The obligor's current or most recent monthly support obligation under section 14-09-09.30 must be considered when determining the duration of a payment plan under this section and the payments due under the agreement. A payment plan under this section is not a modification of any child support obligation of the obligor and does not bar judicial review of a child support order under section 14-09-08.4 or other enforcement actions by the obligee or the state agency.

8. An action of the state agency to withhold, restrict, or suspend a license under this section may not be appealed to the state agency or to the licensing authority, including an appeal under chapter 28-32. Section 50-09-14 does not apply to actions taken by the state agency under this section.

9. Except for statistical purposes, an entry on the driving record or abstract of a restriction or suspension under this section after the restriction or suspension

- 1                   ceases may not be available to the public other than by order of a court of  
2                   competent jurisdiction.
- 3           10.   A licensing authority and any person acting on its behalf is not liable for any actions  
4                   taken to withhold, restrict, or suspend a license under this section. This section  
5                   does not limit the ability of a licensing authority to withhold, restrict, or suspend a  
6                   license on any other grounds authorized by law.