

Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003

SENATE BILL NO. 2246
(Senators Fischer, Heitkamp, J. Lee)
(Representatives Delmore, D. Johnson, Wieland)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

2. Within ten days after receipt of a request for information issued under subsection 1, an income ~~payer~~ payer shall provide the requester with a written statement informing the requester whether or not the income ~~payer~~ payer is, or within the ~~thirty one hundred eighty~~ thirty one hundred eighty days immediately preceding receipt of the request has been, an income ~~payer~~ payer with respect to that obligor. If the income ~~payer~~ payer is, or within the previous ~~thirty one hundred eighty~~ thirty one hundred eighty days has been, an income ~~payer~~ payer with respect to that obligor, the income ~~payer~~ payer shall furnish information to the requester including:
 - a. The amount of any income currently paid to the obligor, calculated on a monthly basis;
 - b. The total amount of income paid to the obligor in the twelve months preceding the month in which the request is received;
 - c. Information regarding any health insurance that may be made available to the obligor's children through the income ~~payer~~ payer;
 - d. The social security number under which payment of any income by the income ~~payer~~ payer to the obligor is reported;
 - e. The obligor's address; and

- f. If the income ~~payer~~ payer is no longer an income ~~payer~~ payer with respect to that obligor, the date of last payment and any forwarding address.

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

2. Any income ~~payer~~ payer who fails or refuses to deliver income pursuant to an income withholding order, when such income ~~payer~~ payer has had in its possession such income, is personally liable for the amount of such income which the income ~~payer~~ payer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to 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 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 public authority under section 4 of this Act. Any damages collected by the public authority 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 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.

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

An income payer who fails to 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 as a contempt of court. Any late fee collected by the public authority 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 deliver income for more than one obligor, any late fees collected under this section must be divided equally among all affected obligors.

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

6. Notwithstanding section 28-20-36, the state disbursement unit shall disburse collected child support payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.]. Any disbursement made in error is not a gift and must be repaid. The public authority may take any action not inconsistent with law to secure repayment of any disbursement made in error. Interest accrued on an unpaid child support obligation is child support. To the extent consistent with the requirements of title IV-D, a payment received with respect to a child support arrearage must first be applied to accrued interest on the earliest arrearage, and then to the principal of that arrearage. The public authority may calculate judgment interest accrued ~~only~~ on child support obligations that first became arrearages after July 1, 2002. The public authority shall enter in its 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.
2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
 - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
 - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less; or
 - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section.
3. Before withholding, restricting, or suspending a license under this section, the state agency shall send a notice to the licensee by first-class mail to the licensee's last-known address stating that the licensee has thirty days after the date of the notice to comply with the subpoena, satisfy the arrearage in full, or negotiate a payment plan with the state agency under this section. The notice must further state that the licensee may contest the action of the state agency by making a written request for a court hearing to the state agency within ten days of the date of the notice.
4. Upon request for a hearing under this section, the state agency shall petition the court that issued or considered the child support order for an order authorizing the state agency to withhold, restrict, or suspend one or more licenses issued to the licensee. If a child support order was issued by a court or administrative tribunal in another jurisdiction, the hearing may be held 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 licensee.

5. The court shall authorize the state agency to withhold, restrict, or suspend a license only if it finds that the licensee's failure to comply with a subpoena, a child support order, or an existing payment plan was willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, owes arrears in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less, or is not in 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 ceases may not be available to the public other than by order of a court of competent jurisdiction.
10. A licensing authority and any person acting on its behalf is not liable for any actions taken to withhold, restrict, or suspend a license under this section. This section does not limit the ability of a licensing authority to withhold, restrict, or suspend a license on any other grounds authorized by law.

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 Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2246.

Senate Vote: Yeas 37 Nays 10 Absent 0

House Vote: Yeas 53 Nays 39 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State