

HOUSE BILL NO. 1038

Introduced by

Legislative Council

(Judicial Process Committee)

1 A BILL for an Act to amend and reenact section 50-09-08.6 of the North Dakota Century Code,
2 relating to restrictions on an individual's operator's license for nonpayment of child support or
3 failure to obey a subpoena.

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

5 **SECTION 1. AMENDMENT.** Section 50-09-08.6 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **50-09-08.6. Suspension of occupational, professional, recreational, motor vehicle**
8 **operator, and vehicle licenses and registrations for nonpayment of child support or**
9 **failure to obey subpoena.**

10 1. As used in this section:

11 a. "License" means:

12 (1) Any certificate, permit, or license issued by an agency of the state or a
13 political subdivision of the state which the obligor is required to obtain
14 prior to engaging in the obligor's occupation or profession;

15 (2) Any certificate, permit, or license issued by an agency of the state
16 which the obligor is required to obtain prior to engaging in a recreational
17 activity; and

18 (3) Any operator's license or vehicle license or registration which the
19 obligor is required to obtain prior to operating or owning a vehicle in this
20 state. As used in this section, "vehicle" includes any motor vehicle as
21 defined in section 39-01-01, aircraft, snowmobile, motorboat, or
22 personal watercraft.

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

- 1 c. "Licensing authority" means an agency of the state or a political subdivision of
2 the state that issues a license, including occupational or professional boards,
3 the game and fish department, and the department of transportation.
- 4 d. "Restrict", as it relates to the operator's license of an obligor or a person who
5 fails to comply with a subpoena, includes the authority of the state agency to
6 authorize the issuance, upon request for good cause, of a restricted
7 operator's license that is solely for the use of a motor vehicle during the
8 licensee's normal working hours.
- 9 2. The state agency, directly or through agents and child support agencies, may
10 withhold, restrict, or suspend one or more licenses issued to:
- 11 a. A person who has failed, after receiving proper notice, to comply with a
12 subpoena relating to a paternity or child support matter;
- 13 b. An obligor who is listed on the arrears registry; or
- 14 c. An obligor who is not in compliance with an existing payment plan that has
15 been negotiated between the obligor and the state agency under this section
16 or in exchange for the state agency refraining from taking an enforcement
17 action against the obligor.
- 18 3. Before withholding, restricting, or suspending a license under subdivision a or b of
19 subsection 2, the state agency shall send a notice to the licensee by first-class mail
20 to the licensee's last-known address stating that the licensee has thirty days after
21 the date of the notice to comply with the subpoena, satisfy the arrearage in full, or
22 negotiate a payment plan with the state agency under this section. The notice
23 must further state that the licensee may contest the action of the state agency by
24 making a written request for a court hearing under subsection 5 within ten days of
25 the date of the notice.
- 26 4. Upon notice to the licensee, the state agency may withhold, restrict, or suspend a
27 license under subdivision c of subsection 2 at any time if the licensee fails to
28 comply with a payment plan negotiated under this section. A copy of the state
29 agency's order to withhold, restrict, or suspend a license must be sent to the
30 licensee by first-class mail to the licensee's last-known address. The order must
31 state that the licensee may contest the action of the state agency by making a

- 1 written request for a court hearing under subsection 5 within ten days of the date of
2 the order.
- 3 5. A request for a hearing under this section must be made to the court that issued or
4 considered the child support order. If a child support order was issued by a court
5 or administrative tribunal in another jurisdiction, the request may be made to any
6 court of this state which has jurisdiction to enforce that order or, if no court of this
7 state has jurisdiction to enforce that order, in any court of this state with jurisdiction
8 over the licensee.
- 9 6. In a contest under this section, the court must affirm the action of the state agency
10 to withhold, restrict, or suspend a license unless it finds that the licensee's
11 delinquency or failure to comply with a subpoena, or an existing payment plan was
12 not willful. Upon a showing by the state agency that the licensee has failed to
13 comply with a subpoena, is listed on the arrears registry, or is not in compliance
14 with an existing payment plan between the licensee and the state agency under
15 this section, the licensee has the burden of proving that the delinquency or failure
16 to comply was not willful.
- 17 7. The state agency shall notify the appropriate licensing authority that the state
18 agency has withheld, restricted, or suspended a license under this section. A
19 license that is withheld, restricted, or suspended by the state agency under this
20 section may be reinstated only by the state agency after the licensee complies with
21 the subpoena, satisfies the arrearage in full, or enters into a payment plan with the
22 state agency under this section.
- 23 8. An obligor and the state agency may enter into a payment plan under which the
24 obligor agrees to satisfy the obligor's total child support obligation, including
25 arrears, within a period not to exceed ten years. A payment plan under this section
26 must require the obligor to make an immediate payment to the state disbursement
27 unit in an amount equal to five percent of the total arrears owed by the obligor or
28 five hundred dollars, whichever is greater. The state agency may waive or reduce
29 the immediate payment that is due under a payment plan if the obligor's current or
30 most recent monthly support obligation is less than five hundred dollars. The state
31 agency may require that a payment plan under this section include satisfaction of

- 1 all court-ordered child support obligations of the obligor. The obligor's current or
2 most recent monthly support obligation under section 14-09-09.30 must be
3 considered when determining the duration of a payment plan under this section
4 and the payments due under the agreement. A payment plan under this section is
5 not a modification of any child support obligation of the obligor and does not bar
6 judicial review of a child support order under section 14-09-08.4 or other
7 enforcement actions by the obligee or the state agency.
- 8 9. An action of the state agency to withhold, restrict, or suspend a license under this
9 section may not be appealed to the state agency or to the licensing authority,
10 including an appeal under chapter 28-32. Section 50-09-14 does not apply to
11 actions taken by the state agency under this section.
- 12 10. Except for statistical purposes, an entry on the driving record or abstract of a
13 restriction or suspension under this section after the restriction or suspension
14 ceases may not be available to the public other than by order of a court of
15 competent jurisdiction.
- 16 11. A licensing authority and any person acting on its behalf is not liable for any actions
17 taken to withhold, restrict, or suspend a license under this section. This section
18 does not limit the ability of a licensing authority to withhold, restrict, or suspend a
19 license on any other grounds authorized by law.