

Testimony
House Bill 1038 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 7, 2009

Chairman Weisz, members of the House Human Services Committee, I am James Fleming, Deputy Director and Chief Legal Counsel of the Child Support Enforcement Division of the Department of Human Services. I am here to provide neutral testimony and background information regarding House Bill 1038.

Current law allows either a court (judicial) or the Department (administrative) to suspend a person's drivers license for non-payment of child support. North Dakota law contains the following provision:

Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the licensee is making a good-faith effort to comply with the child support order.

N.D.C.C. § 39-16-19(3). The Department currently applies a similar good-faith standard to reinstating drivers licenses without restrictions.

The law addressed in the bill, on page 2 line 9, already gives the Department the authority to restrict a license that has not yet been suspended. As we testified before the Interim Judicial Process Committee, the law is unclear on whether we can reinstate a suspended license with restrictions.

An administrative license suspension action by the Department very often results in a payment plan that is signed by the obligor. Subsection 8 of the law addressed in the bill, which starts on page 3 line 23, describes the terms and conditions of a payment plan. This subsection gives the Department the flexibility to work with an obligor who perhaps did not immediately recognize the consequences of failing to pay child support, and now wants to make good faith efforts to support his or her children.

As long as an obligor is willing to pay the court-ordered child support obligation for the current month, which is based on the obligor's actual income or earning ability, the Department can waive or delay some or all of the down payment. We do not insist on full satisfaction of the arrearage unless for some reason the obligor can afford to pay it, such as if we have identified a savings account containing sufficient funds. Once a payment plan is signed, the license is reinstated without restrictions. This allows the obligor to return to normal activities with a minimal amount of government oversight.

One of the reasons that the Department can be flexible in entering a payment plan is that upon breach of a payment plan, which is easy to identify since all payments are required to be paid through our State Disbursement Unit, the license can be immediately re-suspended under subdivision 2(c) of the law (found on page 2 line 14 of the bill).

The current bill draft is unclear whether responsibility for monitoring an obligor's compliance with the license restrictions rests with the Department of Human Services or another agency. If we are to do the monitoring, there would be an added cost which is not in the Department budget. Also, use of the authority is discretionary and not mandated.

The existing law has been in place since 2003 and, to date, we have not had the need to just restrict a license.

Mr. Chairman, we appreciate the interim committee's interest in this area, and I would be happy to address any questions the committee may have.