

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

583Q0757

## SENATE JUDICIARY ENGROSSED NO. **SB 186** 2/17/2009

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senator Olson (Russell)

1 FOR AN ACT ENTITLED, An Act to provide for the imposition of a late payment fee for  
2 certain chronically delinquent child support obligations.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For the purposes of section 2 of this Act, the term, chronically delinquent, means the child  
7 support is paid five or more days after the date the child support is due in each of three or more  
8 months in any twelve-month consecutive period, or the child support paid is less than ninety  
9 percent of the amount due in each of three or more months in any twelve-month consecutive  
10 period.

11 Section 2. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Any chronically delinquent obligor of a payment or installment of support under an order  
14 for support, as defined in § 25-7A-1, is subject to a late payment fee equal to ten percent of the



1 ordered child support or fifty dollars, whichever is greater, for each month in the preceding  
2 twelve months that the payment was five or more days delinquent or the payment was less than  
3 ninety percent of the ordered child support. Any obligee seeking the late payment fee shall file  
4 in the office of the clerk of courts of the county in which the order was filed, or in a county in  
5 which a transcript of the order is filed and docketed, a sworn statement or certificate showing  
6 the date of receipt of each month of delinquent payment and the amount received and the  
7 amount due for the late payment fee. The clerk of courts shall file and docket the statement or  
8 certificate with the order for support or transcript thereof. The late payment fee is effective from  
9 the date and time of docketing the statement or certificate in the office of the clerk of courts. The  
10 obligee shall send a copy of the docketed statement or certificate by certified mail to the obligor  
11 at the obligor's most recent residential or employer address on file with the tribunal as defined  
12 in § 25-9B-101.

13 Section 3. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 The obligor may petition the court to vacate the judgment entered by the clerk of courts  
16 pursuant to section 2 of this Act. Any petition shall be filed within thirty days of the date of the  
17 certified mailing of the docketed statement or certificate to the obligor. The obligor has the  
18 burden of showing an inability to timely pay any delinquent payment. If the court determines  
19 that no delinquency exists or that any delinquent payment was caused by the inability of the  
20 obligor to timely pay the child support, the court may vacate or amend the judgment for any  
21 month in which the court determines that the delinquent payment was caused by an inability to  
22 pay.

23 Section 4. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1       The obligee shall send a copy of the statement or certificate pursuant to section 2 of this Act,  
2 to the obligor at the obligor's most recent residential or employer address on file with the  
3 tribunal as defined in § 25-9B-101, by certified mail not less than ten days before filing the  
4 statement or certificate with the clerk of courts. The obligee shall inform the obligor in the  
5 mailing that if payment of the delinquent child support and late payment fee is received within  
6 ten days, the statement or certificate will not be filed with the clerk of courts.