

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1343

2007 HOUSE HUMAN SERVICES

HB 1343

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1343

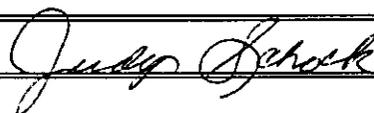
House Human Services Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2801

Committee Clerk Signature



Minutes:

**Vice Chairman Pietsch:** We will have the hearing on HB 1343.

**Representative Kersman, District 31:** See attached testimony.

**Representative Weisz:** I don't disagree with any thing you are saying, but what do we do from the stand point of assuming that person does get out of jail, now he is behind the eight ball that much more, and when he is in jail he is not under obligation to support your kids.

**Representative Kerzman:** That is a major concern for the department of child support. The child support would keep building up.

**Representative Conrad:** Can the money they earn go for child support?

**Representative Kerzman:** I believe it can, but they don't make much, and some may go to restitution.

**Representative Kaldor:** Right now if a reduction support of contribution is declared by a court because of hardship, does that remove the obligation for what ever period of time that, which time of hardship, might exist.

**Representative Kerzman:** they go back to court to readjust.

**Tracy Zeeb:** I feel I and my children are being punished. The father of my children had a choice. He chose to make and sell meth. I have never raised the child support. His parental

responsibility was taken away. I am not on any assistance from the state, and I work over time to not be on. He has never gone to jail for not paying child support. The judge always lets him go. He never gets punished. His arrears is over 24,000 dollars and he still has rights to the children I never get child support even when he is not incarcerated.

**Representative Hatlestad:** Apparently he got an amended judgment, so it had to be a court order activity, and she must have been involved in that discussion at the time at the time the court was considering releasing the judgment.

**Ms Zeeb:** they did a finance affidavit on him. All of his properties are being hid, and I have proof on much of it. So I can not make him sell any thing. All the money is under the table.

**James Fleming, deputy Director and General Counsel of the Child Support Enforcement**

**Division of the Department of Human Services:** See attached testimony. In my testimony on page 4, I talk about some new policy developments. For her medical and insurance the child support is not involved with that, but we are looking into being a part of that.

**Chairman Price:** To collect her money for medical and insurance, does she have to hire an attorney to take it back to court to try and collect?

**Mr. Fleming:** Yes she would. She would need to bring her won motion, weather she represents herself or has an attorney there. We are working on forms that provide where people can seek their own. The committee spent a half a day discussing this.

**Representative Schneider:** It seems to me we are sending a wrong message to the parent that is incarcerated.

**Representative Conrad:** Ms. Zeebs says the father of her children has properties that he has hidden. Do you go after that property?

**Mr. Fleming:** Yes, we try to If the titles are in someone else's name, it would be difficult to prove. Back to the policy issue involved. This is a tough policy question We know you are in a

tough spot to try and decide what is going on, and what should be the outcome. We are comfortable with the outcome today, because we can tell ourselves, the rule of the guidelines is to treat the children of divorced and children of unmarried parents in a way similar if they would be in tact. We will today, catch them on the back side. We don't make use of investigators today but we do have relationships with law enforcements.

**Chairman Price:** any other opposition? If not we will close the hearing on HB 1343

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1343

House Human Services Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2848

Committee Clerk Signature

*Judith Debeck*

Minutes:

**Chairman Price:** take out HB 1343.

**Representative Conrad:** I thought Ms. Zeeb's testimony was very good and she has done her work. I do think a special investigation would help her more. I make a motion for a do not pass, seconded by **Representative Porter**.

**Chairman Price:** asks for discussion having none calls the roll with 11 yeas 1 nay, and 0 absent. **Representative Conrad** will carry the bill to the floor.



**REPORT OF STANDING COMMITTEE (410)**  
February 5, 2007 5:05 p.m.

**Module No: HR-24-2207**  
**Carrier: Conrad**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1343: Human Services Committee (Rep. Price, Chairman) recommends DO NOT PASS (11 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1343 was placed on the Eleventh order on the calendar.**

2007 TESTIMONY

HB 1343

Madam Chair, Rep. Price

Members of House Human Services Committee

Rep. James Kerzman, District 31

I know that in most cases, and you would probably agree, it takes two persons to create a child. Along those lines, I feel very strongly that there is a responsibility on both parties to rear that child and if for whatever reason they can't do this together then the Judicial system in most cases sets up guidelines for interested parties to follow.

Here is a situation that was brought to my attention that I don't feel is quite right. The father of two children was ordered to pay \$ 412.00 in child support for two children along with furnishing Health Ins. and paying half deductibles, coinsurance, non-covered optical, dental, orthodontic and prescriptive. He has been involved with Meth, spent time in and out of jail, is in arrears on child support and to my knowledge has never furnished Health coverage or paid for any health or medical needs.

In December of 2005 the Custodial parent received an Amended Judgment, stating that child support was reduced to \$200.00 and she had to provide health insurance. This reduction was based upon the non-custodial parents situation of being in jail. The Custodial parent asked me some tough questions that I will relate to you. Who is really being punished? Why can't original support go in arrears? Are we protecting the criminal or the children.

In this case, if the non-custodial parent gets his life in order, he can reenter society with very little obligation. Does this seem right?

Hopefully we can get some good debate on this and can arrive at some solution. Be happy to answer any questions.

Respectfully submitted,

Rep. James Kerzman

**Testimony**  
**House Bill 1343 – Department Of Human Services**  
**House Human Services Committee**  
**Representative Clara Sue Price, Chairman**  
**February 5, 2007**

Chairman Price, members of the House Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the Child Support Enforcement Division of the Department of Human Services. I am here to suggest a "Do Not Pass" recommendation on House Bill 1343.

As part of the federal child support enforcement program, the State is required to adopt child support guidelines. Under federal and state law, there is a rebuttable presumption that the amount of child support determined under the guidelines is the correct amount of child support that an obligor should pay. The North Dakota child support guidelines are based on the number of children supported by an obligor and the obligors' income. If an obligor is underemployed or unemployed, income is generally imputed based on the obligor's earning capacity.

When calculating the child support obligation of an unemployed or underemployed person, income is to be imputed in one of the following three ways:

- a. An amount equal to one hundred sixty-seven times the hourly federal minimum wage.
- b. An amount equal to six-tenths of prevailing gross earnings in the community of persons with similar work history and occupational qualifications.

- c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided.

N.D. Admin. Code § 75-02-04.1-07(3).

Usually, the subsection above which will result in the greatest income is applied. However, there is an exception to this rule:

If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c . . . are unavailable in the community, income must be imputed based on earning capacity equal to the amount determined under subdivision a . . . less actual gross earnings.

N.D. Admin. Code § 75-02-04.1-07(6). The North Dakota Supreme Court has held in several cases that an incarcerated obligor's "community" is the jail, which has limited employment opportunities, and therefore imputation at minimum wage is appropriate.

For the committee's information, a minimum wage obligation for one child under the child support guidelines would be \$168 per month, and for two children the obligation would be \$200. By contrast, the median order for one child in North Dakota as of June 30, 2005, was \$266 per month.

States vary widely in how they handle the child support obligations of inmates. Some relieve incarcerated obligors of all child support obligations while incarcerated. The North Dakota Supreme Court has often discussed this issue:

[W]e believe application of subsection (6) of the imputed income guideline to an incarcerated obligor who has no other income appropriately promotes this state's strong public policy of protecting the best interests of children and preserving parents' legal and moral obligations to support their children, while recognizing, but not excusing, the obvious difficulty an incarcerated obligor faces in providing for his or her children.

Surerus v. Matuska, 548 N.W.2d 384 (N.D. 1996).

Chief Justice Vandewalle concurred in the result reached by the majority of the court in Surerus, but further observed:

I do not believe it is wise to release obligors from prison with an arrearage in child support so large that it is inconceivable the obligor will be able to earn enough to pay it.

Surerus, 548 N.W.2d at 389.

More recently, in 2005, the court again visited this issue:

Matuska does not provide incarcerated obligors with a complete reprieve from their child support obligations due to the financial hardships associated with imprisonment. Matuska repeatedly

emphasized the defendant's lack of financial resources capable of satisfying a minimum-wage-based obligation. In this regard, Matuska necessarily stands for the proposition that incarceration, even if it results in a complete lack of financial resources, is alone no justification for a reduction in child support payments below what a minimum-wage earner, or a person without employment, would owe.

Interest of A.M.S., 2005 ND 64 ¶ 7, 694 N.W.2d 8.

Child support obligations must be reviewed by the child support enforcement program at least once every three years upon request of either parent. In May 2006, we adopted a new policy creating exceptions to this general rule for cases in which the obligor is or has been incarcerated.

- An obligor who has at least one year remaining on his or her sentence (with no possibility of earlier release) can request a review.
- If the existing child support order was based on the obligor's incarceration (most often imputed at minimum wage) and it has been at least 12 months since the obligor was released, an obligee can request a review.

In either case, if the guidelines lead to a different support obligation being appropriate, the child support enforcement program will file a motion in court to change the obligation.

I recently served as the chairman of the Child Support Guidelines Advisory Committee, which is convened at least every four years by statute to review the guidelines and make recommendations to the Department. This committee included a district court judge, a tribal court judge, a judicial referee, a state senator (Senator Tom Fischer), a state representative (former Representative Bill Devlin), an attorney in private practice, an obligor, an obligee, and representatives of the Department of Human Services (including the TANF and Medical Assistance divisions).

The committee offered a number of changes to the guidelines regarding the rules for imputation based on earning capacity. However, the committee specifically decided NOT to change the current rule regarding incarcerated obligors.

The Department believes that the decision of the advisory committee on this issue and the existing caselaw reflects a balanced approach between the needs of the children and the ability of an incarcerated obligor to pay child support. For that reason, we suggest that the current rule remain in place to provide for a minimum wage obligation while the obligor is incarcerated and that the committee give a "Do Not Pass" recommendation on House Bill 1343.

Madame Chairman, that concludes my testimony and I would be glad to answer any questions the committee may have.

H-81343

Date January 3, 2006

Dear Sheila Keller

Enclosed are the photo's of the cargo trailer along with the business card for Jason Kust.

- 1) Note logo, phone number match to business card
- 2) Business not licensed or insured at Secretary of State ND
- 3) No license plate on rear of trailer
- 4) VIN # 4FGL0142-5-WE510719 1998 CARGO TRAILER MODEL 5715
- 5) DOT Department will not give me trailer owner name of trailer DOT # 328-2725

Also note Civil No. 30-00-R-1291 Order to show cause signed by Robert Freed February 23, 2005.

Note section numbers

#3 self employed JK Customs employed since June July 2004 earning \$1000.00 per month

#6 not licensed or bonded stated out of jail 4-04 Jason stated quit job at Zephyr 6-04 for more hours

Financial Affidavit Case # 184585-01 Dated 9/24/05

Question # 7 Jason Kust stated became unemployed April 5, 2005

Last employer Zephyr contracting @10.00 per hour @30 hr week  
Zephyr Contracting Phone # 222-0890

A question I have is how his support can be reduced when he is not found guilty of his crimes yet. What if he finds a loop hole and is released? Can I change the judgment order? **Orders should not be allowed to change until a sentence is in place. He is not yet found guilty.**

Tracy Zeeb @ 471-1708



Bob Bullinger  
Phone # 663-0634

P.O. Box 320  
Cresco, IA 52136  
Phone: 319-547-8000  
Fax: 319-547-8100

FEATHERLITE LIMITED WARRANTY

Featherlite Mfg., Inc. ("FEATHERLITE") warrants that its product (the "Trailer") will be free from defective materials and/or workmanship to the original purchaser ("Original Purchaser") for a period of three (3) years from the date of purchase, when properly maintained, subject to the terms and conditions of this Limited Warranty (the "Featherlite Warranty"). A copy of this Featherlite Warranty, signed and acknowledged by the authorized selling dealer and the Original Purchaser, must be returned by the dealer to FEATHERLITE at the above address postmarked no later than ten (10) days following purchase of the Trailer by Original Purchaser or all warranties will be null and void.

This Featherlite Warranty covers the main frame consisting of bottom rail, floor crossmembers, side posts, roof rail extensions, king pin and sub frame only. All other parts manufactured by FEATHERLITE that attach to the main trailer, such as the doors, gates, dividers, ramps, lift gates, components used in interior conversions, and floors are warranted for a period of one year. Paint and enamel finishes are warranted for a period of one year and such warranty does not apply to damage arising from wear, deterioration and/or damage from road elements, improper wash solvents, salt, sand, weather conditions, discoloration, rust through, spider cracking or any of the stated general bases for exclusion from this warranty. All component parts or options manufactured or supplied by a vendor to FEATHERLITE such as axles, jacks, couplers, etc., shall be warranted for a period of one (1) year except where the original equipment manufacturer's warranty for such component (the "Vendor Warranty") is greater than one (1) year, in which case, the Vendor Warranty schedule shall apply. EXCLUSIONS FROM THIS FEATHERLITE WARRANTY: Parts exposed to the elements or subject to active wear and tear, electricity, or friction are considered normal wear items and as such are excluded from this Featherlite Warranty. These normal wear items include, but are not limited to, bearings, brakes, brake linings, hoses, brake drums, brake actuation components, oil seals, paints, lights and lamp bulbs, door seals, floor finishes, undercoating, tires, suspensions, accessories, and the like. Conversions, parts or components added to Trailer by any other party other than Featherlite. FEATHERLITE reserves the right to modify or improve its products covered by this Featherlite Warranty.

ANY AND ALL WARRANTIES SHALL BE VOID ON A PARTICULAR TRAILER IF: 1. The Trailer is at any time (a) overloaded, (b) damaged in a collision or other accident, (c) loaded in a manner such that the load is not properly secured or the weight is not properly distributed, (d) not lawfully operated on well-maintained public roads, or (e) operated in a negligent manner, misused or abused in any manner which produces unusual strain or shock. 2. The Trailer is not maintained or serviced in accordance with FEATHERLITE's recommended service or preventative maintenance schedule which is provided to the Original Purchaser with the Trailer. 3. The Trailer is loaded in excess of gross vehicle load ratings stated on the Trailer nomenclature plate. 4. Damage is caused by operator's failure to distribute the load carried within Trailer so as not to exceed coupler limitations and/or degrade Trailer towing stability. 5. Damage is caused by failure to check and torque lug nuts properly. 6. Damage is caused by any Act of God. 7. Any modification, alteration replacement or repair to the Trailer is made without FEATHERLITE's prior knowledge and consent. The Trailer covered by this Featherlite Warranty is designed and engineered to be pulled by a one ton truck or lighter. Pulling the Trailer with a larger or heavier truck voids this and any warranty whatsoever except when the appropriate trailer reinforcement option is ordered and built with the trailer.

FEATHERLITE's sole obligation under this Warranty is limited to repairing or replacing, at FEATHERLITE's option, any component, part or parts thereof which are determined by FEATHERLITE to be defective as a direct result from FEATHERLITE's defective material or workmanship. Any FEATHERLITE product found to have defective material and/or workmanship must be serviced or repaired by an authorized FEATHERLITE factory representative or by a service facility which has been agreed to in writing by the Warranty Department of FEATHERLITE prior to any work being started. Notice of any claim under this Featherlite Warranty shall be mailed to FEATHERLITE's Warranty Department at P.O. Box 320, Cresco, Iowa 52136, or faxed to 319-547-6100. All warranty claims must be authorized in writing by FEATHERLITE's Warranty Department, prior to any expenses being incurred relating to such possible warranty claims.

FEATHERLITE may at its sole discretion request customer to deliver its product to one of its service facilities or factory locations for warranty work to be done. Any freight transportation charge to or from factory or service center is the sole responsibility of purchaser and shall not be a part of this Featherlite Warranty whatsoever.

To the extent Vendor Warranties are made available to the Original Purchaser by the Vendors to cover any defective component part or condition in a Trailer, FEATHERLITE shall use reasonable efforts to provide sufficient information to the Original Purchaser to enable the Original Purchaser to obtain direct Vendor Warranty coverage or assistance from the applicable Vendor. However, FEATHERLITE does not give any warranty, either express or implied, that any components, parts, or accessories provided by Vendors will be subject to, or meet the conditions of, any Vendor Warranties with respect to such components, parts, or accessories.

When required, photos of the defective part or parts or the actual part or parts may have to accompany the warranty claim before payment can or will be made. Any part or parts returned for warranty service must be prepaid freight to FEATHERLITE.

The Original Purchaser's exclusive remedy for breach of this Featherlite Warranty shall be as set forth herein. Any action for breach of this Warranty must be commenced within the periods stated herein. FEATHERLITE neither assumes, nor authorizes any other person to assume for it any other liability whatsoever in connection with its product.

FEATHERLITE makes no warranty of merchantability, no warranty of fitness for a particular purpose, nor any other warranty, expressed or implied, concerning the Trailer. FEATHERLITE will not be responsible for consequential, incidental, cargo loss, special or indirect damages of any kind which may be incurred as a result of any defect in material or workmanship in the Trailer or any other breach of this Featherlite Warranty, regardless of whether the defect is subject to this Featherlite Warranty, including, but not limited to, loss of time, inconvenience, or loss of income from use of said product. This Featherlite Warranty gives you specific legal rights, and you may also have other rights which vary from State to State. Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. Any warranty which may arise as a matter of law is limited in duration to the period of the written warranty.

This Warranty is not transferable by the Original Purchaser.

The undersigned dealer, by signing this Warranty, states that such dealer has informed and explained to purchaser all warranty and claim procedures.

By signing this Featherlite Warranty form, the purchaser acknowledges that he has read the above Featherlite Warranty and agrees that, should any warranty claim be made by purchaser, purchaser will follow the procedures as herein set forth.

DEALER Robert Bullinger  
(Please Print)

PURCHASER Jason Klust  
(Please Print)

DEALER Signature [Signature]

Purchaser Signature [Signature]

Date: 10/22/98

Date: 10/22/98

Purchaser Phone 701-258-2412

Mailing Address 6014 Dayer Drive

City Bismarck, ND State ND Zip Code 58504

Trailer covered by this warranty 7x14 Yukon Model J715 VIN 4FG-LB14J-5-118E510119