



2020 South Dakota Legislature

House Bill 1139

Introduced by: **Representative** Pischke

1 **An Act to require the payment of attorney's fees in cases addressing noncompliance**
 2 **with visitation orders.**

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

4 **Section 1.** That § 15-17-38 be AMENDED:

5 **15-17-38. Attorney's fees--Taxed as disbursements.**

6 The compensation of ~~attorneys and counselors at law~~ any attorney for services
 7 rendered in civil and criminal actions and special proceedings is left to the agreement,
 8 express or implied, of the parties. ~~However, attorneys'~~ An attorney's fees may be taxed as
 9 ~~disbursements~~ a disbursement if allowed by ~~specific~~ a statute.

10 ~~The~~ Except as otherwise required by § 25-4A-5 or 25-4A-15, the court, if
 11 ~~appropriate,~~ in the interests of justice, may award ~~payment of attorneys'~~ attorney's fees
 12 in all cases of divorce, annulment of marriage, determination of paternity, custody,
 13 visitation, separate maintenance, support, or alimony.

14 The court may award the fees before or after a judgment or an order.

15 The court may award ~~attorneys'~~ attorney's fees from ~~trusts~~ a trust administered
 16 through the court, as well as in probate and guardianship proceedings. ~~Attorneys'~~

17 Attorney's fees may be taxed as ~~disbursements~~ a disbursement on a mortgage
 18 ~~foreclosures~~ foreclosure either by action or by advertisement.

19 **Section 2.** That § 25-4A-5 be AMENDED:

20 **25-4A-5. Sanctions for violation of custody or visitation decree.**

21 If the court finds that any party has willfully violated or willfully failed to comply
 22 with any ~~provisions~~ provision of a custody or visitation decree, the court shall impose
 23 appropriate sanctions to punish the offender or to compel the offender to comply with the
 24 terms of the custody or visitation decree.

1 The court may enter an order clarifying the rights and responsibilities of the parents
2 and the court's order.

3 The court may order one or more of the following sanctions:

- 4 (1) To require the offender to provide the other party with make up time with the child
5 equal to the time missed with the child, due to the offender's noncompliance;
- 6 ~~(2) To require the offender to pay, to the other party, court costs and reasonable~~
7 ~~attorney's fees incurred as a result of the noncompliance;~~
- 8 ~~(3)~~ To require the offender to pay a civil penalty of not more than the sum of one
9 thousand dollars;
- 10 ~~(4)~~(3) To require the offender to participate satisfactorily in counseling or parent
11 education classes;
- 12 ~~(5)~~(4) To require the offender to post bond or other security with the court conditional
13 upon future compliance with the terms of the custody or visitation decree or any
14 ancillary court order;
- 15 ~~(6)~~(5) To impose a jail sentence on the offender of not more than three days; or
- 16 ~~(7)~~(6) In the event of an aggravated violation or multiple violations, the court may modify
17 the existing visitation or custody situation, or both of any minor child.

18 If the court finds that any party has willfully violated or willfully failed to comply
19 with any provision of a custody decree, the court may require the offender to pay, to the
20 other party, court costs and reasonable attorney's fees incurred as a result of the
21 noncompliance.

22 If the court finds that any party has willfully violated or willfully failed to comply
23 with any provision of a visitation decree, the court shall require the offender to pay, to the
24 other party, court costs and reasonable attorney's fees incurred as a result of the
25 noncompliance.

26 The provisions of this section do not prohibit the court from imposing any other
27 sanction appropriate to the facts and circumstances of the case.

28 **Section 3.** That § 25-4A-15 be AMENDED:

29 **25-4A-15. Court costs--Attorney's fees.**

30 ~~The~~ Except as otherwise provided in this section, the court may order either party
31 to pay attorney fees and court costs and reasonable attorney's fees in an action filed under
32 §§ 25-4A-9 to 25-4A-16, inclusive, in accordance with § 15-17-38 or any other applicable
33 statute.

1 If the court finds that a party has willfully violated or willfully failed to comply with
2 any provision of a visitation agreement, the court shall order the offender to pay, to the
3 other party, court costs and reasonable attorney's fees incurred as a result of the
4 noncompliance.

5 **Section 4. LEGISLATIVE FINDINGS.**

6 The Legislature finds that enforcement of a court order for visitation is a right of significant
7 public interest.