

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1172

2005 HOUSE HUMAN SERVICES

HB 1172

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1172

House Human Services

☐ Conference Committee

Hearing Date 1/18/05

Tape Number

2

Side A

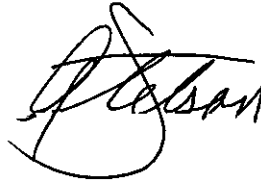
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Side B

Meter #

0--7.3

Committee Clerk Signature



Minutes:

**Chairman Price:** Opened discussion on HB 1172.

**Representative Porter:** Regarding the question asked prior, that amount cannot be taken off first because we have a law in the state that all payments go through the SDU to make sure that court orders are changed appropriately and that the account balances are changed appropriately.

**Chairman Price:** Do you remember the phone call you could hear from my desk?

**Representative Porter:** Parts of it.

**Chairman Price:** I spoke to an attorney who represented a Texas child support agency and they said that there are a difference between TANIF cases and IVD cases. They said they don't do TANIF cases but do IVD cases. I said we have some cases that have other obligations to the state that are IVD cases, and they said we don't collect anything that goes to the state. I said well you do IVD cases and they said but we don't do TANIF cases. His proposed amendments here Mr. Schmidt and contract information you had to hold the phone three feet away from your ear.

There may be some issues on how some of these outside ones are collecting, they may need some clarification in the law as to what is a government owed obligation. So that don't think that TANIF is the only thing we have first claim to.

**Representative Porter:** I think that if we keep the bill the way that it is that is a non issue because everything then goes through the SDU and those cases where there is payments owed back to the state prior to being disbursed that money is taken out if there isn't the money is just sent to the individual and at that point they would own that collection agency money. The problem that the collection agencies have is they want the money to run to them first and they want to subtract their percentage and then mail it to the individual, and then they want the individual then to call the state and say they got their money. It is against a court order so you can't do that in reverse against the court order. It needs to go through the procedure that we have set up in the state. I don't know how other states handle it like Texas. All I know is that the way we have it written is that every dollar goes first to the SDU so that they can disburse it properly. On page 3, line 24, after the word "efforts" we are replacing "and is appropriated on a continuing basis" with "any funds retained by the public authority under this subsection must be deposited in the established subsection 50-09-15.1 notwithstanding 50-09-15.1 any funds that have been retained and deposited under this subsection may be used by the public authorities to promote public awareness of consequences of out of wedlock births and the costs of supporting minor children". That goes back to our unclaimed property provisions so that the department still has the ability to access that money and use it as a promotion but there is also a responsibility that if someone comes forward and claims that money five years from now, they still have a claim to that money. On page 4, we remove Section 8 and page 5 we remove line 1-5, which is the rest of

Section 8. On page 6, we remove Section 12. That also takes care of a lot of the fiscal ????

There is still some computer things, but the department will have to redo the fiscal note.

**Chairman Price: (3.5)** Do they think they will be under the amount for appropriations?

**Representative Porter:** That is \$5,000. It still has to go to appropriations?

**Jim Fleming:** The revenue lost to the unclaimed property fund and the increase expected under the bill to the department would exceed \$5,000. So we believe the revised fiscal note to reflect these amendments, if adopted, would still ????. The components of the fiscal note having to do with the unclaimed property fund would still be about a \$30,000 impact.

**Representative Porter:** That is the amendment from the subcommittee, and I would move for the amendment.

**Chairman Price:** Do I hear a second?

**Representative Kaldor:** Second

**Chairman Price:** Is there any discussion?

**Representative Potter:** Can you explain to me on Page 2, line 3 and 4, you said to delete those a little bit more about the kind of consensus from what I understand that it would be good to delete that because I was kind of liking that myself. It seemed like almost a usury as to what some of the collection agencies are charging, so can you help me with that?

**Representative Porter:** I guess as we looked at it, it was I think beyond the scope of the legislature to find out what business expenses that any particular business would have in determining what fee they needed to charge in order to collect a particular debt or not. The way it is written with a 25% cap is unusual in other collection areas of the law because the collection agencies have a willing consumer that wants them to collect the debt. If they have a lot of

utilization they may get a lower rate, if they have a little utilization they get a higher rate, if they have to use other vehicles like small claims court or other means than there are more expenses to collecting that debt. It was felt that by removing it, by our knowledge of what they do in their business is very limited and that it is a willing consumer is what they are dealing with. If they want to negotiate that rate, they are more than welcome to.

**Representative Kaldor: (6.0)** Just to agree with Representative Porter indicated. It is really difficult for us to establish what the percentage should be because of a custodial parent may agree to take less than 75% in some situations. Probably more importantly that this is the other portions of the bill are still going to make it very difficult, if not impossible for some of these agencies to operate in North Dakota. They are not likely to because of the way they have to collect their money. If there was a way to limit what they could assess, we probably eliminated it pretty significantly by the process we have forced them to go through.

**Representative Potter:** I tend to agree that I don't like to tell businesses what they are going to do, or to mandate to cities or counties or anyone else what should be done, but it does rub me a bit the wrong way on the thought of these people that tend to sign up with some of these agencies that they would be fairly desperate people. Talking about for your agency coming out after your car or your other possessions you might owe money on - that is different than your kids. That just puts it in a different ballpark to me. So when they have these contracts that we looked at and all the rest of it I just wonder how much they consider the percentage they are agreeing to. Are they just so desperate to get anything that they sometimes will just sign. That is just a concern of mine.

**Representative Porter:** I guess in my own business that we have about a 27% of uncollectible, I have a pretty good first hand knowledge of working with collection agencies. There is not a single collection agency that we work with that would do the work that we ask them to do for 25%. We are upfront willing to give away 33 1/3% of the amount owed just for them to start working on it, plus any additional expenses that come up later. I guess the other thing I would relate it to to try and help you understand as to why we shouldn't be setting these percentages is in the sales of real estate. When I want to sell a piece of property, I might call four or five real estate agencies to see what kind of percentage they are taking, and find a low listing service that does it for half of that and make my determination based on the market. When I am all said and done I probably didn't sell my house using the low level service and have to list with one of the higher percentages, but that is my right as a consumer of those products to do that investigation work. By putting that cap at 25% it is not going to help anyone either, because it still is going to matter that someone is willing to even take the business.

**Representative Kreidt:** It is probably better to have a source out there that is charging a larger percent than not having anyone out there available, and that way they would not get any of their money. This way they still have options.

**Chairman Price:** All those in favor say I. Opposed? We have an amended bill - what are your wishes. How long do you think it would take for a fiscal note?

**Jim Fleming:** We provided the amendments to our fiscal analyst, would check with him and I hope it would be two days or not sooner. I think it is numbers he has crunched already.

**Chairman Price:** If the impact is under 50, I don't have to send it, but there is no continuing appropriation is there?

**Jim Fleming:** That is right, there is no continuing appropriation.

**Chairman Price:** What are your wishes on the bill?

**Representative Porter:** I move for a **DO PASS** on HB 1172 as amended with re- referral to appropriations.

**Representative Kaldor:** I **SECOND** the motion on HB 1172.

**Chairman Price:** Discussion on the bill?

Motion carried. **VOTE: 11-YES 1-NO.**

**Representative Porter will carry bill on the floor.**



**FISCAL NOTE**  
**Requested by Legislative Council**  
04/15/2005

Amendment to: Reengrossed  
HB 1172

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						\$20,695
Expenditures			\$10,661		\$20,695	
Appropriations			\$10,661		\$20,695	

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill: 1) would allow for contempt hearings to be used more selectively, 2) authorizes the Department to redefine the meaning of "reasonable cost" for health insurance, 3) establishes guidance for the distribution of child support collections when the recipient has died, 4) provides access to confidential information to ensure pension benefits are not exempt from child support collections, and 5) would allow for the Department to continue to be able to be a service provider to the tribes and regional offices.

The bill also allows the Department to establish an amnesty program and compromise assigned and unassigned interest as a part of the amnesty program.

The bill creates an "arrear registry" to consolidate the trigger points for liens, executions, license suspensions, and public disclosure so all four tools become available at the same time. The bill also creates a new tool known as a Financial Institution Deduction Order (FIDO)

This bill will enhance child support collections. The amount of the increased collections is undeterminable.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The 2005-07 other funds revenues consists of federal funds of \$20,695 for the system changes required to provide for the changes related to this bill.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The 2005-07 general fund expenditures consist of \$10,661 needed to provide the match for the federal funds of \$20,695 for the system changes required to implement the changes of this bill. The 2005-07 other funds expenditures consist of the previously mentioned federal funds of \$20,695.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The 2005-07 general fund appropriation will need to be increased by \$10,661 to provide the match for the federal funds of \$20,695 for the system changes needed to implement the changes of this bill. The 2005-07 other funds appropriation will need to be increased to provide the appropriation authority to spend the above mentioned federal funds of \$20,695.

**Name:** Brenda M. Weisz  
**Phone Number:** 328-2397

**Agency:** DHS  
**Date Prepared:** 04/15/2005

# FISCAL NOTE

Requested by Legislative Council  
03/17/2005

Amendment to: Reengrossed  
HB 1172

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues					\$2,640	
Expenditures			\$1,360		\$2,640	
Appropriations			\$1,360		\$2,640	

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill: 1) would allow for contempt hearings to be used more selectively, 2) authorizes the Department to redefine the meaning of "reasonable cost" for health insurance, 3) establishes guidance for the distribution of child support collections when the recipient has died, 4) provides access to confidential information to ensure pension benefits are not exempt from child support collections, and 5) would allow for the Department to continue to be able to be a service provider to the tribes and regional offices.

The bill also allows the Department to establish an amnesty program and compromise assigned and unassigned interest as a part of the amnesty program.

This bill will enhance child support collections. The amount of the increased collections is undeterminable.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The 2005-07 other funds revenues consists of federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The 2005-07 general fund expenditures consist of \$1,360 needed to provide the match for the federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient. The 2005-07 other funds expenditures consist of the previously mentioned federal funds of \$2,640.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive*

*budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The 2005-07 general fund appropriation will need to be increased by \$1,360 to provide the match for the federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient. The 2005-07 other funds appropriation will need to be increased to provide the appropriation authority to spend the above mentioned federal funds of \$2,640.

**Name:** Brenda M. Weisz  
**Phone Number:** 328-2397

**Agency:** DHS  
**Date Prepared:** 03/18/2005

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/14/2005

Amendment to:      Engrossed  
                            HB 1172

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$14,594		\$6,515
Expenditures			\$1,360	\$45,382		\$23,294
Appropriations			\$1,360	\$45,382		\$23,294

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill: 1) would allow for contempt hearings to be used more selectively, 2) authorizes the Department to redefine the meaning of "reasonable cost" for health insurance, 3) establishes guidance for the distribution of child support collections when the recipient has died, 4) provides access to confidential information to ensure pension benefits are not exempt from child support collections, and 5) would allow for the Department to continue to be able to be a service provider to the tribes and regional offices.

The bill also provides for collections remaining undistributed after 3 years to remain with Child Support rather than being transferred to unclaimed property. The funds would then be available, subject to legislative appropriation, for public information campaigns.

The bill also allows the Department to establish an amnesty program and compromise assigned and unassigned interest as a part of the amnesty program.

This bill will enhance child support collections. The amount of the increased collections is undeterminable.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The 2005-07 other funds revenues consists of federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient, \$30,788 of transfers to the new fund from undistributed child support collections (this is offset by a reduction in other income to Unclaimed Property Division of \$30,788), and additional federal funds of \$11,954 related to the undistributed child support collections transferred to the new fund.

The 2007-09 other funds revenues consists of \$16,779 of transfers to the new fund from undistributed child support collections (this is offset by a reduction in other income to Unclaimed Property Division of \$16,779) and additional federal funds of \$6,515 related to the undistributed child support collections transferred to the new fund.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The 2005-07 general fund expenditures consist of \$1,360 needed to provide the match for the federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient. The 2005-07 other funds expenditures consist of the previously mentioned federal funds of \$2,640 and \$42,742 of federal and other funds (\$30,788 of transfers from undistributed child support collections and \$11,954 of the matching federal funds this will generate) for public information campaigns.

The 2007-09 other funds expenditures consist of \$23,294 (\$16,779 of transfers from undistributed child support collections and \$6,515 of the matching federal funds this will generate) for public information campaigns.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The 2005-07 general fund appropriation will need to be increased by \$1,360 to provide the match for the federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient. The 2005-07 other funds appropriation will need to be increased to provide the appropriation authority to spend the above mentioned federal funds of \$2,640 and the \$42,742 of federal and other funds (\$30,788 of transfers from undistributed child support collections and \$11,954 of the matching federal funds this will generate) for public information campaigns.

The 2007-09 other funds appropriation will need to be increased to provide the appropriation authority to spend the \$23,294 (\$16,779 of transfers from undistributed child support collections and \$6,515 of the matching federal funds this will generate) for public information campaigns.

**Name:** Brenda M. Weisz  
**Phone Number:** 328-2397

**Agency:** DHS  
**Date Prepared:** 02/14/2005

**FISCAL NOTE**  
Requested by Legislative Council  
01/24/2005

Amendment to: HB 1172

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$14,594		\$6,515
Expenditures			\$1,360	\$45,382		\$23,294
Appropriations			\$1,360	\$45,382		\$23,294

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill: 1) would allow for contempt hearings to be used more selectively, 2) authorizes the Department to redefine the meaning of "reasonable cost" for health insurance, 3) establishes guidance for the distribution of child support collections when the recipient has died, 4) provides access to confidential information to ensure pension benefits are not exempt from child support collections, and 5) would allow for the Department to continue to be able to be a service provider to the tribes and regional offices.

The bill also provides for collections remaining undistributed after 3 years to remain with Child Support rather than being transferred to unclaimed property. The funds would then be available, subject to legislative appropriation, for public information campaigns.

The bill also allows the Department to establish an amnesty program and compromise assigned and unassigned interest as a part of the amnesty program.

This bill will enhance child support collections. The amount of the increased collections is undeterminable.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The 2005-07 other funds revenues consists of federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient, \$30,788 of transfers to the new fund from undistributed child support collections (this is offset by a reduction in other income to Unclaimed Property Division of \$30,788), and additional federal funds of \$11,954 related to the undistributed child support collections transferred to the new fund.

The 2007-09 other funds revenues consists of \$16,779 of transfers to the new fund from undistributed child support collections (this is offset by a reduction in other income to Unclaimed Property Division of \$16,779) and additional federal funds of \$6,515 related to the undistributed child support collections transferred to the new fund.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*

*item, and fund affected and the number of FTE positions affected.*

The 2005-07 general fund expenditures consist of \$1,360 needed to provide the match for the federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient. The 2005-07 other funds expenditures consist of the previously mentioned federal funds of \$2,640 and \$42,742 of federal and other funds (\$30,788 of transfers from undistributed child support collections and \$11,954 of the matching federal funds this will generate) for public information campaigns.

The 2007-09 other funds expenditures consist of \$23,294 (\$16,779 of transfers from undistributed child support collections and \$6,515 of the matching federal funds this will generate) for public information campaigns.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The 2005-07 general fund appropriation will need to be increased by \$1,360 to provide the match for the federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient. The 2005-07 other funds appropriation will need to be increased to provide the appropriation authority to spend the above mentioned federal funds of \$2,640 and the \$42,742 of federal and other funds (\$30,788 of transfers from undistributed child support collections and \$11,954 of the matching federal funds this will generate) for public information campaigns.

The 2007-09 other funds appropriation will need to be increased to provide the appropriation authority to spend the \$23,294 (\$16,779 of transfers from undistributed child support collections and \$6,515 of the matching federal funds this will generate) for public information campaigns.

**Name:** Brenda M. Weisz  
**Phone Number:** 328-2397

**Agency:** DHS  
**Date Prepared:** 01/26/2005



# FISCAL NOTE

Requested by Legislative Council  
01/03/2005

Bill/Resolution No.: HB 1172

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$239,594		\$56,515
Expenditures			\$1,360	\$270,382		\$73,294
Appropriations			\$1,360	\$2,640		

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill: 1)provides for a cap on fees charged by private collection agencies of 25% on the collection of past due child support, 2)would allow for contempt hearings to be used more selectively, 3)authorizes the Department to redefine the meaning of "reasonable cost" for health insurance, 4)changes the judgment interest rate from a fixed rate of 12% to a variable rate, 5)establishes guidance for the distribution of child support collections when the recipient has died, 6)provides access to confidential information to ensure pension benefits are not exempt from child support collections, 7)would allow for the Department to continue to be able to be a service provider to the tribes and regional offices.

The bill also provides for collections remaining undistributed after 3 years to remain with Child Support rather than being transferred to unclaimed property. The funds would then be appropriated on a continuing basis for public information campaigns. Because 91% of all collections are now distributed electronically the biennial amount expected to be available for this is less than \$3,000.

The bill also allows the Department to establish an amnesty program and compromise assigned and unassigned interest as a part of the amnesty program.

The bill creates a revolving fund from Bank of North Dakota earnings to be used to pay for uncollectible recovery accounts. The bill would transfer \$25,000 of Bank earnings to the fund as an initial deposit.

This bill will enhance child support collections. The amount of the increased collections is undeterminable.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The 2005-07 other funds revenues consists of federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient, \$30,788 of transfers to the new fund from undistributal child support collections (this is offset by a reduction in other income to Unclaimed Property Division of \$30,788), additional federal funds of \$11,954 related to the undistributal child support collections transferred to the new fund, and \$225,000 of Bank of North Dakota earnings to be transferred to the newly created revolving fund to pay for uncollectible recovery accounts.

The 2007-09 other funds revenues consists of \$16,779 of transfers to the new fund from undistributal child support collections (this is offset by a reduction in other income to Unclaimed Property Division of \$16,779), additional federal

funds of \$6,515 related to the undistributal child support collections transferred to the new fund, and \$50,000 of Bank of North Dakota earnings to be transferred to the newly created revolving fund to pay for uncollectible recovery accounts.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The 2005-07 general fund expenditures consist of \$1,360 needed to provide the match for the federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient. The 2005-07 other funds expenditures consist of the previously mentioned federal funds of \$2,640, \$42,742 (\$30,788 of transfers from undistributal child support collections and \$11,954 of the matching federal funds this will generate) for public information campaigns, and \$225,000 of Bank of North Dakota earnings to be transferred to the newly created revolving fund to pay for uncollectible recovery accounts.

The 2007-09 other funds expenditures consist of \$23,294 (\$16,779 of transfers from undistributal child support collections and \$6,515 of the matching federal funds this will generate) for public information campaigns, and \$50,000 of Bank of North Dakota earnings to be transferred to the newly created revolving fund to pay for uncollectible recovery accounts.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The 2005-07 general fund appropriation will need to be increased by \$1,360 to provide the match for the federal funds of \$2,640 for the system changes required to provide for the changes related to the contempt hearings and the distribution upon the death of the recipient. The 2005-07 other funds appropriation will need to be increased to provide the appropriation authority to spend the above mentioned federal funds of \$2,640.

None of the expenditures related to the special funds created for public information campaigns and to pay for uncollectible recovery accounts are reflected because they are through continuing appropriations and fall outside of the agency's budget and appropriation.

**Name:** Brenda M. Weisz  
**Phone Number:** 328-2397

**Agency:** DHS  
**Date Prepared:** 01/10/2005

Date: 1/20/05

Roll Call Vote #: /

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1172

House

Human Services

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as Amd - Ref Express*

Motion Made By *Rep Porter* Seconded By *Rep Kaldor*

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S. Price	x		Rep.L. Kaldor	x	
V Chrm.G. Kreidt	x		Rep.L. Potter	x	
Rep. V. Pietsch	x		Rep.S. Sandvig	x	
Rep.J.O. Nelson	x				
Rep.W.R. Devlin	<del>x</del>	✓			
Rep.T. Porter	x				
Rep.G. Uglem	x				
Rep C. Damschen	x				
Rep.R. Weisz	x				

Total ( ) //

No /

Absent 0

Floor Assignment *Rep Porter*

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1172: Human Services Committee (Rep. Price, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (11 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1172 was rereferred to the **Appropriations Committee**.

Page 1, line 3, remove "a new section to chapter 50-06.3,"

Page 1, line 6, remove "section 28-20-34,"

Page 1, line 8, remove "judgment interest,"

Page 1, line 15, replace "A" with "Notwithstanding section 13-05-02, a"

Page 1, line 24, after the underscored semicolon insert "or"

Page 2, line 2, replace "; or" with an underscored period

Page 2, remove lines 3 and 4

Page 3, line 24, replace "and is appropriated on a continuing basis" with ". Any funds retained by the public authority under this subsection must be deposited in the account established under section 50-09-15.1. Notwithstanding section 50-09-15.1, any funds that have been retained and deposited under this subsection may be used by"

Page 3, line 25, remove the first "to"

Page 3, line 26, after the underscored period insert "Subject to available appropriations, any claim by an obligee for funds that have been retained under this subsection must be paid out of the account established under section 50-09-15.1."

Page 4, remove lines 21 through 31

Page 5, remove lines 1 through 5

Page 6, remove lines 4 through 15

Renumber accordingly

2005 HOUSE APPROPRIATIONS

HB 1172


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1172

House Appropriations Committee  
Human Resources Division

Hearing Date: 2-2-05 Wednesday p.m.

Tape Number	Side A	Side B	Meter #
III	X		4.8 - 18.3

Committee Clerk Signature 

Minutes:

**Chairman Delzer** called the meeting to order on HB 1172.

**Rep. Todd Porter, District 34 Mandan:** I am here from the Human Services Committee to explain the re-referral of HB 1172. Section one: collection agencies without licensure are collecting arrearages since Code does not specify they be licensed. This can mean court cases, so we put in a new section for Code describing collection agencies that are collecting arrearages. But payments need to be run through the disbursement unit like the department's child collections before it goes to the obligor so it can be properly credited, and finally to the collection agency. Some people prefer working with private agencies.

Section two: the process of serving and how it works; Section three: a change in federal statute dealing with insurance requirements for the obligor; Section five: a new provision for the Department to use unassigned payments to support a campaign against out-of-wedlock births.

**Chairman Delzer:** Did you leave that as a continuing appropriation?

**Rep. Porter:** Yes.

**Chairman Delzer:** How does it become unclaimed property?

**Rep. Porter:** Payment is made to State without a SDU. After third year, it is turned over to the Unclaimed Property Division. If unclaimed after five years, it goes into the Common Schools Trust Fund.

Section six: Allows the Department to set up collections with an amnesty program. This informs people who owe that if they pay today, the interest will be waived. (Rep. Metcalf came in at 3:30; and Rep. Kerzman) Should be constitutional. Section seven: clarifies the paternity side of child support enforcement. Section eight: deleted in the amendment as it was unbelievably complicated.

**Chairman Delzer:** That is probably enough of an overview. If we change the appropriation to some degree, would you as bill carrier still be comfortable carrying it to the floor?

**Rep. Porter:** Yes.

**Chairman Delzer:** We will ask the department to be here tomorrow.


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1172

House Appropriations Committee  
Human Resources Division

Hearing Date: 2-3-05 Thursday a.m.

	Tape Number	Side A	Side B	Meter #
I			X	12.8
II		X		2.2

Committee Clerk Signature 

Minutes: **Chairman Delzer** called the meeting to order.

**James Fleming, Deputy Director of the Child Support Enforcement Agency**, provided an overview of HB 1172.

**Chairman Delzer:** Reading through the fiscal note and engrossed bill, you have a continuing appropriation.

**Fleming:** That is for agreements with tribes and regional transport units. It would not include unclaimed property funds.

**Chairman Delzer:** Why not go through the Commons School Trust Fund?

**Fleming:** The amounts deposited in that fund are considered income to the State from running a child support program. The feds want 66 cents back. That is coming out of the operating of the appropriation for the child support division. We might as well roll it back into the program rather than bear that expense.

**Chairman Delzer:** How much are we talking about?



**Fleming:** It is a pool of money that will dry up in three years. These are unclaimed checks and only eight percent of caseloads are paid by check. The rest come electronically. There will be a drastic drop in the unclaimed property deposits. We anticipate \$30,788 in the 07 biennium in unclaimed property, some of which can have a federal match. Let me explain how you get to the total \$45,382 on the fiscal note. Four thousand is what we estimate in making changes in the bill regarding distributions of when the custodial parent dies, and for the contempt process. It is not built into the budget.

**Allen/LC:** It will not show up on the summary. Only if you amend it, Mr. Chairman.

**Chairman Delzer:** Let us go through the bill.

**Fleming:** The engrossed version section one deals with private agencies or unregistered collections agencies. We want to partner with these entities. Child support is not owed to the custodial parents, but to the kids. You will see contracts by private agencies who get to keep 50% of every payment that goes to the family. The problem is that by State law and federal mandate, the first dollars received is to go to the kids. It is not to pay the outstanding unpaid child support. What the contracts do is reverse that saying the payments on the old stuff comes first. So instead of going to the kids current food and rent needs, it is applied to past due stuff.

**Chairman Delzer:** What happens when there are arrears out there and the kids are over 18. Does it go to them? Or does it go to the obligee?

**Chairman Delzer:** The money would go to the obligee unless the court order says something else.

**Chairman Delzer:** You are kidding!

**Fleming:** No, sir, I am not! In overdue arrearages over one month, the law looks first to the custodial parents, who have already covered the kid's expenses and unpaid support, as the first party to restore. There would still be a claim from the adult children for that money. Another part of the bill deals with the obligee who dies, leaving who is responsible for the arrears and who has rights to collect. This bill says the kids get the money.

**Chairman Delzer:** Is this going to shut down collection agencies?

**Fleming:** It does not set a fee cap on the custodial parents arrears. We are making sure the State gets its share of the arrears. Currently we are unfair to the obligor and we do not know if the money is ever collected. As long as they're working off the arrears, the collection agency and family can do whatever they want. We want the kids to get the support first. We would like it all to go through the SD by court order first to avoid that choice.

**Chairman Delzer:** What were the changes the standing committee made?

**Fleming:** It removed the fee cap of 25%. Section two: If obligor is one month behind in arrears, a contempt hearing is scheduled or a notice of arrears is sent. But we are finding a lot of time is spent on the contempt process. This bill would give clerks discretion to give another month. Section three: Revises reasonable cost of health insurance; section four: Gives us one year instead of six months to pursue flexibility with employers; section five: Unclaimed property is turned back after three years. The money would be deposited and collect interest and used for outreach activities only. There is no legal reason for that. We expect three years from now, the rate of increase will drop to \$1600 per biennium including federal match.

**Chairman Delzer:** Allen (LC), are there places in the Code that locks this? This looks like the Legislature could not use it for other places like child support. I would like to see language that

says the Legislature has final say on how the money is used, and that the department can only state its preference.

**Fleming:** Section six: This has two different subsections, including amnesty which is the judgment interest is accruing at up to 8%. It passed in the Senate.

**Chairman Delzer:** Why wasn't this all put into one bill?

**Fleming:** In past sessions, it was an omnibus bill.

**Chairman Delzer:** Housekeeping rules is not bad to group, but policy issues are.

**Fleming:** The amnesty period excites us. All interest is going to be negotiated. In lines 11-18 we are proposing distribution solution when custodial person dies. Sections seven and ten: relate to confidentiality requirements and usage; section eight: Public (government) pensions are currently unattachable. We will be able to contact PERS; section nine: Deals with penalties assessed for untimely reporting for new employees; section 11: completes the process of section eight; section twelve: We see great potential of becoming a service provider to regions and tribes.

Collaboration between all is necessary to become more efficient.

**Chairman Delzer:** Why does it need to be a continuing appropriation?

**Fleming:** Regions and tribes are not looking to use this because it would change or stop after two years.

**Chairman Delzer:** I don't like that. Allen (LC), draw an amendment to sunset this again. This should come before the Legislature's attention every two years. *(Tape II Side A starts)*

**Mike Schwindt, Child Support Enforcement Director with the Department of Human**

**Services:** We do not want to hold onto the money any longer than we have to. We want to find the people to collect. We do not want black eyes for everyone.

Page 5

Human Resources Division

Bill/Resolution Number 1172

Hearing Date: 2-3-05

**Fleming:** On continuing appropriation, \$800,000 in tribal authority is not needed if this is in place.

**Chairman Delzer:** No need to do it twice.

2005 HOUSE STANDING COMMITTEE MINUTES

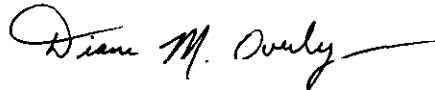
BILL/RESOLUTION NO. 1172

House Appropriations Committee  
Human Resources Division

Hearing Date: 2-7-05 Monday a.m.

Tape Number	Side A	Side B	Meter #
I	X		33.4 - 42.6

Committee Clerk Signature



Minutes: **Chairman Delzer** opened the discussion of HB 1172 (see one-page proposed amendment 58217.0201) regarding the child support collection services. The amendment to the engrossed bill sunsets the appropriation another two years.

**Rep. Bellew:** It says "provide an expiration date." Do we provide that date?

**Chairman Delzer:** See page six line seven of engrossed bill. It changes it from 2005 to 2007.

**Vice Chair Pollert:** I move that the amendment 58217.0201 of the engrossed HB 1172 be approved.

**Rep. Wieland:** I second it.

**Rep. Kerzman:** I resist the amendment. It is a small continuing appropriation and we need it to keep on going.

**Chairman Delzer:** I would like to keep it sunsetted to keep it coming before us so we know if the federal money has been used.

**Chairman Delzer:** With voice vote, motion carries 4-2.

Page 2

Human Resources Division

Bill/Resolution Number 1172

Hearing Date: 2-7-05

**Vice Chair Pollert:** I move for a Do Pass As Amended on HB 1172.

**Rep. Wieland:** I second it.

**Rep. Bellew:** If we pass it or kill it in here, it still has to go to full committee, right?

**Chairman Delzer:** Right. Clerk will take roll call. Motion carries 4-2.

**Vice Chair Pollert** will carry the bill to full committee and **Rep. Porter** will carry it to the floor.


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB11172  
Child Support

House Appropriations Full Committee

☐ Conference Committee

Hearing Date February 9, 2005

Tape Number 1	Side A X	Side B	Meter # #20.2 - #31.0
Committee Clerk Signature			

Minutes:

**Rep. Ken Svedjan, Chairman** opened the discussion on HB1172.

**Rep. Chet Pollert** explained that this bill deals with the licensing of private collection agencies and the problem with out of state collections. There is a part dealing with unclaimed property after three years and there is an amnesty program in this bill. We did not look at the policy of this bill as much as with the appropriations. The amendment #0201 added a sunset clause for June 2007 to make sure that they had to come before us again as there are federal funds involved.

**Rep. Mike Timm, Vice Chairman** asked about the continuing appropriation language in the standing committee's amendments.

**Rep. Chet Pollert** answered that the standing committee took off the sunset clause and our committee put in a clause for June 2007 back in so they would have to come back before the legislature to explain the moneys.

**Rep. Ken Svedjan, Chairman** clarified that the Human Service Committee removed the June 2005 language and our committee removed the overstrike and added June 2007 language so that in two years they would have to come back and report what happened here.

**Rep. Chet Pollert** answered that this was correct.

**Rep. Ken Svedjan, Chairman** asked Rep Pollert to review the fiscal notes for the bill.

**Rep. Chet Pollert** commented that \$4000 in computer programing costs which would have to be done to update their program, was made up of \$1360 general funds and \$2640 is federal funds. \$42,742 is revenue generated by depositing the child support payments that go unclaimed for three years.

**Rep. Ken Svedjan, Chairman** asked about the sources of the other funds listed here

**Rep. Jeff Delzer** answered that these would be child support collection funds. The fiscal note is included but they are not requesting any money because they think they can find it in their budget. This is true of the next bill, HB1173, as well. We put the sunset back in on the continuing appropriation.

**Rep. Chet Pollert** moved to adopt amendment #0201 to HB1172.

**Rep. Jeff Delzer** seconded. (meter Tape #1, side A, #25.9)

**Rep. Ken Svedjan, Chairman** called for a voice vote to adopt amendment #0201 to HB1172.

Motion carried.

**Rep. Chet Pollert** moved a Do Pass As Amended motion to HB1172.

**Rep. Alon C. Wieland** seconded.

**Rep. Jeff Delzer** commented that HB1172 and HB1173 came out of the Human Services Committee. There are some complex changes. Section 1 puts collection agencies under the



control of the department because the single parent would set their own contracts. Section 2 has to do with waiving interest if the deal is made with the obligor. Section 3 has to do with how much they expect the obligor to contribute to the health care of the child. Section 4 makes it a year instead of 180 days for time that you would have to go to the courts for some of this. Section 5 through 7 have to do with child support collected and they can't find the obligee. So they hold on to the money for 5 years in case someone claims it, but they would like to spend some of it if they can too. So this is complicated and the standing committee will have to explain it further on the floor. (meter Tape #1, side A, #26.8)

**Rep. Ken Svedjan, Chairman** clarified that for our purposes here the subcommittee has looked at the financial impact of this and the department thinks they can find this within their budget. It does set the continuing appropriation for this but you have set it so that we can have a look at it again in two years.

**Rep. Ken Svedjan, Chairman** called for a roll call vote on the Do Pass As Amended motion on HB1172. Motion carried with a vote of 21 yeas, 1 nay and 0 absences. Rep Porter will carry the bill to the house floor.

**Rep. Ken Svedjan, Chairman** closed the discussion on HB1172.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1172

Page 1, line 9, remove "and" and after "date" insert "; and to provide an expiration date"

Page 6, line 7, remove the overstrike over "(Effective through June 30," after "~~2005~~" insert  
"2007", and remove the overstrike over the overstruck closing parenthesis

Renumber accordingly

Date: 2/7/05 Mon. a.m.  
Roll Call Vote #: ①

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1172

House Appropriations - Human Resources

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58217. 0201

Action Taken Do Pass as Amended

Motion Made By Rep. Pollert Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Jeff Delzer		✓	Rep. James Kerzman	✓	
Vice Chairman Chet Pollert	✓		Rep. Ralph Metcalf	✓	
Rep. Larry Bellew		✓			
Rep. Alon C. Wieland	✓				

Total (Yes) 4 No 2

Absent

Floor Assignment Rep. Porter ; Rep. Pollert as back-up

If the vote is on an amendment, briefly indicate intent:

Provides a sunset clause with the continuing appropriation  
so it has to come before the legislature in '07.

Date: **February 9, 2005**  
Roll Call Vote #: **1**

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB1172**

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

58217.0201

Action Taken **DO PASS AS AMENDED**

Motion Made By **Rep Pollert** Seconded By **Rep Weiland**

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson	X		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer		X
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	X		Rep. Larry Bellew		X
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Guleson	X		Rep. James Kerzman	X	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson	X				

Total Yes **21** No **2**

Absent **0**

Floor Assignment **Rep Porter (Human Services)**

If the vote is on an amendment, briefly indicate intent:

Date: **February 9, 2005**  
Roll Call Vote #: **1**

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB1172**

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number **58217.0201**

Action Taken **DO PASS AS AMENDED**

Motion Made By **Rep Pollert** Seconded By **Rep Weiland**

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson	X		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer		X
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	X		Rep. Larry Bellew		X
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Guleson	X		Rep. James Kerzman	X	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson	X				

Total Yes **21** No **2**

Absent **0**

Floor Assignment **Rep Porter (Human Services)**

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

HB 1172, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (21 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1172 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "and" and after "date" insert "; and to provide an expiration date"

Page 6, line 7, remove the overstrike over "(Effcotive through Junc 30," after "**2005**" insert "2007", and remove the overstrike over the boldfaced overstruck closing parenthesis

Renumber accordingly

2005 SENATE HUMAN SERVICES

HB 1172

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1172

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 28, 2005

Tape Number	Side A	Side B	Meter #
1	x		00-end
1		x	00-883
2	x		2934-end
2		x	00-1420

Committee Clerk Signature *Cathy Minero*

Minutes:

Chairman Lee opened the public hearing on HB 1172. All members were present.

This bill relates to judgment interest and the collection and disbursement of child support. It also relates to judgment interest, reporting of new hires, enforcement of medical support, and the collection and disbursement of child support; to provide a continuing appropriation; and to provide an effective date.

**Testimony in favor of the bill**

**James Fleming, Deputy Director and General Counsel of the State Child Support**

**Enforcement Division of the Department of Human Services. See written testimony**

(Attachment 1)

**Sen. Brown:** Who's hiring the collection agencies?



**Fleming:** The custodial parent. These companies can help the custodian parent collect what's owed to them.

**Sen. Brown:** They should be under contract to you.

**Fleming:** No, we're not looking for them to be under contract to us, we just want to make sure our efforts are compatible and not clashing heads. That is a problem in this area because, right now, they're not regulated by anything. Sometimes they're keeping the money (as referenced in written testimony) even though the judgments says all payments are supposed to go through the SDU.

**Sen. Lyson:** Wouldn't the same thing happen if the person went to the state's attorney and got a complaint against him for failing to act on the court order? It is a court order isn't it for every child support that they have to go through.

**Fleming:** Right, every court order does provide that. If an obligor does complain to a court, then I would question how that court was going to obtain jurisdiction over the collection agency. It's likely the obligor would have to file a motion in court and serve the private collection agency in another state and ask that they be joined. It's a difficult court driven process for something that's really quite simple. The PCA just needs to pay the money to the SDU.

**Sen. Lyson:** I would think that they would follow the court order, but I'll hold off right now.

**Sen. Brown:** What do they charge?

**Fleming:** About 50%.

**Sen. Warner:** How can they justify paying 50% of the child support when, as a matter of public policy, that the child support belongs to the child, that parent cannot confer and it's all going into

the pot of money. Presumably they're going after of them because they're short on money to begin with.

**Fleming:** That's the reason we think you should enact this section of the bill. There's a hole in the legislation right now that needs to be filled so kids will be protected.

Mr. Fleming went back to his written testimony.

**Vice Chairman Dever:** This company is licensed in Arizona, are they licensed to do business in North Dakota?

**Fleming:** No, this was noted on the House side. The industry responded to a legislator explaining why they weren't. It is not a frivolous argument, but it is a very hard and technical reading of the statutes that they're making to avoid the licensing issue.

**Vice Chairman Dever:** We're talking about an out-of-state national company and I would hope that our North Dakota companies wouldn't be so unscrupulous.

**Fleming:** We have not heard any nightmares or horror stories about North Dakota companies. I would hope that the contract from that network is one that their own industry would condemn--in terms of prohibiting people from profit. But that's why you regulate industries, you don't regulate for the good ones, you regulate to make sure there aren't any bad ones.

**Sen. Brown:** Will this legislation do that?

**Fleming:** Yes. This will allow the child support program and the agencies to work together. It will make obligors get full credit for what they're paying and it allow the PCAs to collect this money from the custodial parent for payments on arrears. It doesn't say they can't do business, it requires them to reexamine how they get a portion of current support and readjust their percentages to say 'we're going to see what percentage we need to charge of the payments on

arrears to meet our expenses. This bill lets them do this. But it does ensure the current gets to the family, it does ensure the payment records stay accurate, it does ensure that they're licensed so when they engage in illegal or unscrupulous activity, Mr. Entringer's office is allowed to bring disciplinary action against them and regulate them.

**Sen. Brown:** Minus the 35% fee.

**Fleming:** Correct, although, on the House side we originally proposed a fee cap, but the House felt that if the other protections were in place, at least for the time being, the market could run its course and see what type of fees would bear. There was a reason we had a fee cap, but we still like what the House has left in.

**Vice Chairman Dever:** I would think someone would enter into this type of agreement because there was a certain amount of money in arrearage that your department has been unsuccessful in collecting. Then they would contract with this agency, they would collect whatever dollars they could but if the obligor, was to pay that arrearage to you, then the obligee would still be responsible for paying them the fee on that amount of money collected.

**Fleming:** That's how the contract is set up in this example. We would presumable pay it out to the custodial parent, so there's money for the agency to pay them. But the custodial parents of each contract, if they don't turn the portion of the money over to the PCA.

Vice Chairman Dever asked Mr. Fleming to recap the amendments the House did and also to explain the fiscal notes, which he did.

**Sen. Brown:** Is there any chance that this might keep some collection agencies out of here?

**Fleming:** It's possible, the industry has not had the chance to work in the jurisdiction that has imposed these requirements so I suspect, initially, that their going to complain to you that this

will drive them out of the state. If you pass it anyway, I suspect that they will come back and figure what kind of percentage they need to take on arrears to do business here, and they'll do it. Some of them might not bother, we don't do business with all of them right now.

**Sen. Brown:** But one of them sold somebody in Bowman already.

**Fleming:** The intent of this bill, is *not* to drive them away. The intent of this bill is to make sure our efforts are compatible and the SDU records do not lead us to the situation where we have to give the obligor, for payments we didn't get, or deny the obligor credit for payments he/she actually made. Neither of those is a fair outcome.

**Sen. Dever:** Are there North Dakota agencies that collect child support?

**Fleming:** We're not aware of any.

**Sen. Dever:** If an agency submitted dollars to you, minus the 35%, has the obligor satisfied that portion of the debt, or does he still owe that 35%.

**Fleming:** We feel the obligor still owes that 35%. The judgment says this much shall be paid through the SDU and it has not happened.

**Sen. Brown:** Under that example, how would you account that? Would the 35% that was withheld be counted towards the arrears or would that...

**Fleming:** It would be difficult to handle those other than an case by case basis. If it's the first time an agency has done business with a North Dakota customer and didn't know our law, we may use that as an education opportunity.

A lot of the correspondence we've had from these agencies talk about, when the government's not working already, why take this tool away from people? You are dealing with a desperate population that will enlist any help they can to get child support paid, and that's understandable.

But what they don't tell you is that this national income withholding form that they require us to use can also be used by these PCAs. You're not talking only situations where we've already struck out and they're stepping in to do something we couldn't.

Senator Lyson asked for a definition of PCA. Mr. Fleming said PCA is private collection agency, and SDU is state disbursement unit in our office that processes payments.

The private collection agencies talk about being there to help when we strike out, but they're allowed to use this national form. So if the private collection agency finds out about an employer of the obligor, when we get notice of a new employer, within two day, we're mailing a new income withholding order. But it is possible, and does happen, that the private collection agency finds out about the new employer before we do. They send out an income withholding order. They will beat ours in the mail by a matter of days, but theirs go in first--there's is the one the employer will honor. So you a great paying case there, where 35-50% of the amount withheld is going to be kept by the collection agency, and the balance paid to the family. Where, if theirs had gotten lost in the mail or delayed for just two days, our order would have gotten there first, would have been the one the employer honored and 100% of the money would have gone to the family. So when they're talking about how they're only helping in cases where we struck out, that's not true. They're making their money on cases where they've gotten the withholding order in place before we do.

**Sen. Dever:** If this bill passes, how will you look at that?

**Fleming:** If the fee is set up as in this sample contract, where it's a percentage of current support, that is prohibited. What will happen in that situation, is the private collection agency would be required to turn over 100% of the collection to us, we will pay 100% of that, minus any

state assigned arrears, to the family. Then the PCA and the family can sort out their own contracts. The custodial parent may have to pay a fee to the agency, but we have enough to do to without being the collection agency for a collection agency.

Mr. Fleming went on with the written testimony beginning with section 2. (tape 1 side a meter #3100-5440).

**Neutral Testimony**

**Todd Kranda, Attorney at the Keltsch Law Firm. Lobbyist on behalf of the North Dakota Collectors Association.** I had not initially intended to speak. We did have our day in front of the House and had our amendments adopted, generally. The objectionable portions were taken out, however, because of some of the testimony and the questions that came out, I felt a need to at least explain that to you and say that I am the local collector agencies in North Dakota. There are 20 plus difference licensed agencies and those are members of our association. We do not oppose the bill and appreciate the opportunity to speak neutrally on the bill and the changes that were made were supported by us from the House. Our member do not collect the obligations that this bill affects, the current support obligations. The only arrangement that I'm aware of is collection of NSF checks that may have been paid for the obligations, and that is under contract with the state. My local agency collectors do not effectuate or contract to collect current child support arrearages or current child support. The impression was left that all collection agencies in North Dakota are running under these contracts that were presented to you as recognized by the committee. Those are out of state agencies, for the most part. Those are issues about licensure. We support being licensed and we are regulated by the department of financial institutions.

**Sen. Warner:** Is there a cap on the amount of money you retain from a collection of a check?

**Kranda:** I'm not sure what the contract is with the state or how they pursue that. There are NSF check fees, a \$25 per check penalty, a civil penalty, 3 times the instrument or maybe \$100 is the current statutory limits, but other than that in terms of what the fee or compensation is, that is negotiated between the person assigning or using the services and the collection agency. So there isn't a cap. We don't support that there should be because they're all different and amounts vary depending on the difficulty of pursuing it, whether it needs to go to a judgment or whether this person is a deadbeat and how you will effectuate the recovery.

**Sen. Dever:** Where there other changes your organization wanted to see in the bill?

**Kranda:** Generally, the changes that have been made are acceptable, in fact, that's the reason I mentioned Mr. Fleming that I'm just here to monitor but with some of the initial representations these agencies are bad actors, I want to make sure you understand that our collection agencies are unaffected by this, we don't oppose the bill, that we are licensed, we are regulated and we do operate under the laws and we're not the ones you're focusing on with this legislation.

**Testimony in opposition to bill**

**Paul Sanderson, representing SupportKids, Inc.** See written testimony (Attachment 2).

Mr. Sanderson emphasized that this bill was anti-competition and just because there were a few bad apples in the industry, we should not eliminate every business from this market.

**Vice Chairman Dever:** Are your only objections to section 1?

**Sanderson:** Yes. And we will have some amendments next week when representatives from SupportKids are allowed to testify further next week.

**Sen. Dever:** Will they have suggestions?

**Sanderson:** We did. That contract in there is egregious, that is not the standard SupportKids contract they use and not the practices they apply by. These companies serve a valuable purpose and all you need to do is ask certain parents that have used this service and they will tell you that percentage of something is better than all of nothing. These companies are only used when the state agency has failed. And we're not up here attacking the North Dakota department, the North Dakota department is at the top of the nation with their collection activities. Also, their recent stats show that is between 60-70% they fully collect. Which means there is still 30-45% of cases every year that they do not full collect on. There's a market in North Dakota for these people.

**Sen. Lyson:** We would have to change our law if we're talking about what you're talking about because there is no arrears unless the current is paid. Are you saying that you're going to come in here and say that we should change it so that we have a date, firm, that anything before that time is in arrears and they can collect that?

**Sanderson:** No, that's not what we're going to hear. We agreed, when the money goes to the state disbursement unit, which we will forward to them, they can apply whatever percentage to current and the other percentage to arrears. When they send the money back to us, we take our fee out and send the rest to the custodial parent. What the department has said, is that the parents have the right to spend this money how they want. If they give it to the parent, and the parent writes us a check, they understand that can happen. But the problem is that sometimes they won't and the businesses aren't going to do business like that. They won't come in here, especially when the parents make the choice that the money should be forwarded directly to the private company. We don't disagree with the current support/arrears and how it should be provided, but we also contend, contrary to the position by the department, that a custodial parent



has the right to determine how they spend that support. And if they choose to spend that current support to obtain the services of a private company to obtain money for their child and they deem that's in their child's best interest, they should be allowed to do that. That's our position here today.

There was no further testimony on this bill. Vice Chairman Dever closed the public hearing.

Chairman Lee reopened discussion.

**Sen. Lyson:** I have a problem with Section 5.

**Sen. Warner:** I have a problem with creating exemption. There are a lot of agencies that could make a similar claim. If we just retained that money and the agency...

**Sen. Lyson:** I wouldn't mind, after 10 years is it, when it goes back into the general fund?

**Sen. Warner:** No, I think it stays in there forever.

**Chairman Lee:** Last week in GVA we were talking about unclaimed property.

**Sen. Brown:** I listened more about the disbursements from unclaimed property. You can't get it out of there without good documentation.

**Sen. Dever:** Sounds like a money grab to me. And it does say that-later if they came to claim it, they say it's subject to appropriation.

**Sen. Warner:** Some of us were alarmed with the invasiveness of the federal regulations in banking.

**Sen. Brown:** Only the matches are saved.

**Sen. Dever:** If you're behind in your child support and you have money in your account, they can sweep your account.

**Chairman Lee:** That's federal law?

**Sen. Lyson:** That's what he (Jim Fleming) said and I think there probably is some federal law in there, according to the banker I talked to.

**Sen. Brown:** The only data that is saved are the matches.

**Chairman Lee:** The information is red flagged.

**Sen. Lyson:** They would then get an execution and it would be served on the bank to freeze that account.

**Chairman Lee:** So the child support unit is the one that ends up with the red flag?

**Sen. Lyson:** Correct. They (department) gets the execution and the sheriff serves it to the bank and that freezes that account. The other part of that is they want permission now to do their own levies and draw the money out of the bank. Right now the only people that can do that is the sheriff, and I'm not sure, it might be constitutionally done (the constitution says the sheriff has to do it).

**Sen. Brown:** Section 1 has to do with collection agencies--there are collection agencies around the country, it hasn't hit here yet, are approaching those that are supposed to get child support but aren't getting it. They're signing them up, and going after the money, and you've got Fleming's testimony--in there are samples of two different contracts, one calls for 50% cost and the other 35% cost. This to me is outrageous.

**Sen. Lyson:** I don't care about the cost, I didn't like the things in the contract.

**Chairman Lee:** Well no payment of current support, while there's any balance remaining on arrears? This is true no matter what payment is called by the NCC judge court clerk (reading from the contract).

**Sen. Lyson:** I don't think that contract would stand up in North Dakota because there are several things in there that are against the law here.

**Sen. Brown:** The way Section 1 is written, it would pretty much eliminate these companies from doing business in North Dakota. Go to the last page (of Jim Fleming's testimony) and there's a copy of an envelope from this group that wants to come and see us. It shows the social security number in the window.

**Chairman Lee:** I forgot to ask Mr. Fleming how much of the \$200 million arrearage is interest.

**Sen. Brown:** He did say that the interest was adding up way too much.

**Sen. Warner:** He said \$2 million a month was adding up.

**Sen. Dever:** Half of that is owed to the state.

**Chairman Lee:** The child winds up getting state aid because the obligor isn't paying regularly to keep up the family.

**Sen. Dever:** So that arrearage, would that go to the state or the family?

**Chairman Lee:** It goes to the state because the state has paid the family already.

**Sen. Dever:** Todd was here and said that North Dakota agencies don't get involved unless someone writes a bad check.

**Sen. Brown:** The bill has some plusses.

Chairman Lee suggested that the committee work their way through the rest of it and see what other things are redeemable. There are several questions we need to check on.

**Sen. Dever:** There are probably some legitimate companies doing this and some really terrible ones.

**Chairman Lee:** I have a concern about them...I think the child care enforcement unit does need to know when money is being paid, and for them to be left out of the loop, which in essence, they are, is a concern to me. If these private outfits are contracting directly with the obligee and then money winds up going back to them so they can get their fee, the child support enforcement unit doesn't get to lay first claim to that. The state doesn't get the first dollar, which is what we always thought was appropriate for those families that have received state assistance.

**Sen. Dever:** The agencies charge 35 to 50%. So does the child support consider that to be full payment? As far as the obligor is concerned it, he's paid it.

**Sen. Lyson:** He said that child support does not.

**Chairman Lee:** With the strengthened tools that the child enforcement unit now has, which ticks off any obligor who's behind anyway, do we see that much benefit from permitting those private collection offices to come in?

**Sen. Lyson:** If the collection agency actually collects some of the arrears for a family and stays on his butt and he stays current, is it our business to tell that obligee that they can't give any money away, because it's their money now.

**Sen. Warner:** It's their children's money actually. This is vindictive behavior, going after them at any cost. They're willing to throw away half of the children's inheritance, just to punish the other parent.

**Chairman Lee:** It is a vulnerable population that will be solicited by these agencies. They're desperate for the money and feel that something is better than nothing. There are some opportunists out there that are suggesting to people they can't get the money owed to them without their help.

**Sen. Lyson:** I'd leave this portion in the bill if we had something to say 'with the agreement of the department.' That the money goes directly to the department first.

**Chairman Lee:** Then the private agency wouldn't be able to take its fee out first?

**Sen. Lyson:** But then I think they'd say it was okay, because the department would pay its money back to them. That's what the argument is, if the client gets it, they'll never pay us.

**Sen. Warner:** The department says it will not pay the fees, all the money goes to the family.

**Sen. Lyson:** But if we allowed this thing, I guessing that, we're the policy makers here, if we make this thing so it says, 'with the authority of the department' and they agree with this contract, they will pay the private company.

**Chairman Lee:** With the tools that state has available to it now, why is SupportKids or any other outfit going to be more successful at collecting that the state child support enforcement unit might be when they are the ones that can suspend drivers licenses and hunting licenses and other things.

**Sen. Lyson:** Evidently, they're not doing it.

**Sen. Dever:** It's not that no one is doing anything, but they're not having success at it. That court case he gave us a copy of had to do with SupportKids, too.

**Sen. Lyson:** Right now, we don't allow an obligor to pay directly, they have to go through the department. So why would we allow anyone to make a contract? They should have to make a contract with the department.

**Chairman Lee:** It would have to be a three-way contract? They would have to sign off as well? I can't imagine they'd be crazy about that, but they'll do whatever we tell them.

**Sen. Warner:** I can't imagine them ever doing it voluntarily. I feel comfortable with mandating that they have to.

**Sen. Lyson:** I don't think we have to mandate, but just say they 'may'. If they've got a deadbeat they haven't been able to find for years, and the collection agency finds him and gets some money, that's better than nothing.

**Sen. Brown:** But it's coming at great cost.

**Sen. Lyson:** But we weren't getting anything before.

**Sen. Dever:** Why doesn't the state contract with them?

**Chairman Lee:** Good question. Maybe we should enable the state to contract with them.

**Sen. Lyson:** That's what I'm saying.

**Sen. Warner:** If the state would contract directly, who would pay that? Would the state be deducting fees from the obligation, or is an additional appropriation needed to deduct from the general fund?

**Sen. Lyson:** That's why you would need permission from the obligee to go into this thing because it would come out of the funds collected.

There was further discussion on the remaining sections of the bill.

Chairman Lee ended discussion on this bill. No action was taken.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1172

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
2		X	670-END
3	X		1-2800

Committee Clerk Signature



Minutes:

**Chairman Lee opened the meeting on HB 1172. All Senators were present.**

**Paul Sanderson, representing Supportkids** appeared before the committee, and introduced Sarah Anderson.

**Sarah Anderson** explained her situation with Supportkids to the committee. Her ex-husband in Indiana refused to pay child support. In 2000, she moved up to North Dakota, her husband was \$86,000 behind in child support payments. He failed to show up to court and make his payments. When North Dakota prosecutors could not help her, since her husband was in another state, collections could not be enforced. Supportkids helped her out greatly, private investigators tracked her ex-husband down and are making sure he pays child support.

**Chairman Lee-** Are private collection agencies illegal in Indiana?

**Sarah-** No, they aren't.

**Senator Dever-** Have you had child support collections since moving to North Dakota? Did North Dakota Child Support help you out?

**Sarah-** Not until I hired Supportkids a little over a year ago. My youngest child is now 20. North Dakota child support told me there was nothing they could do to assist me since the divorce took place in Indiana, North Dakota can't enforce Indiana laws.

**Senator Lyson-** What year was your divorce?

**Sarah-** 1985.

**Senator Lyson-** The amount that the courts ordered at that time are much lower than what the federal standards are at this time. Did you go back to court in Indiana in 2000 to get reinstated for child support?

**Sarah-** I had an attorney go back, but my ex-husband would not show up for court. I was left with nothing.

**Eric Rosenkoetter, Executive Counsel for Supportkids,** appeared in support of the bill. See written testimony.

**Chairman Lee-** So, are the only amendments you have to offer are those mentioned in the conclusion of your written testimony?

**Eric-** Correct.

**Senator Dever-** I am surprised the opposition party is not here. Is that the general sense of the industry? Are their agencies we need to be more concerned about?

**Eric-** We are an active member of the child support enforcement council, which is our industry trade group. I am not aware of any agencies who go to the extreme on this issue. I can provide



you with a list of the members of the trade group later on. We charge at 34%, while the national average is 29%.

**Chairman Lee-** The concern was raised by the Attorney General's office, that it is our responsibility to see if private collections agencies play a role, and how to protect people that need all of the money. They obviously are not able to keep a third of it.

**Eric-** By the time people are willing to pay a fee to a private agency, they have been through the state Child Support program for quite a long time. If a fiscal note was added to this bill, I would suggest a regulatory system similar to what we have in Texas. There are certain restrictions in the contracts, that need to be reviewed by an attorney. That is the only way to ensure consumer protection.

**Senator Dever-** If a obligor pays \$100, and you take \$34 out of it, the obligor is only credited for paying \$66?

**Eric-** No. He would get full credit for the entire amount. It goes straight from the employer to the state disbursement unit, then to our agency. The obligors credit goes through before we take out our portion.

**Senator Lyson-** If we go by what the unit wants, you have to take it out. If this bill goes through, you would take your fee out before sending it to the state?

**Eric-** No. There has been poor communication between our agency and the ND Child Support office. I've tried for 2 years and had no success with that.

**Chairman Lee-** Your organization is in all 50 states, and operates the same way in each one?

**Eric-** There are three states that we collect in, but don't take fines in. Those states have restrictive statutes and fee caps in place.

**Chairman Lee-** Could you go into those states after non-compliant obligors?

**Eric-** Yes, if we are licensed there. We don't accept clients in states that mandate us to only charge 15-20%, that is below our break even percentage.

**Chairman Lee-** How are you licensed? Is it done by a board?

**Eric-** We are licensed in sixteen states, by the Fair Debt Collections Practices Act.

**Chairman Lee-** Who do you report to?

**Eric-** Most states have a regulatory Debt Collections Board, that we report to.

**Senator Lyson-** In section 5, with the money we are not able to disburse, where should the funds go?

**Senator Warner-** Whether its an electronic transfer or a check, there is a balance on an account somewhere that is not being retained. Does it go in the unclaimed property division?

**Jim Fleming, representing the Department of Human Services** appeared before the committee. In section 5, if the desire is to continue sending the money in the unclaimed properties division, that would be fine. We don't want to make money off of our clientele, and sometimes it appears that way to some people.

**Senator Warner-** What happens to un-allocated resources once the electronic transfer is complete. If it goes to a bank account or debit card account, then those agencies turn the money back to unclaimed properties. After 3 years, it heads over to unclaimed properties. If they close their account, then the bank would need to keep track of how long its been unclaimed and turn it over to unclaimed property division. The money doesn't reside in our department.

**Senator Lee-** A question for Eric- you talked about deleting all of section 1, does that include subsection 1?

**Eric-** That is an option, we have a small amount of clients up here, and that doesn't really justify us getting licensed here at this time.

**Chairman Lee-** In subsection 3, you are mentioning the payment going to the Dept. of Human Services rather than your agency?

**Eric-** Yes.

**Chairman Lee** asked for clarification on the proposed amendments for the bill from Eric, who went on to explain.

**Carlee McLeod, committee intern** explained duties of obligor, and collection practices from her research.

**Jim Fleming-** The plan we have now is working, its an established practice. Sometimes we find out late regarding debt, and its not commercially reasonable. If a person wants to attach pension benefits, you obtain a copy of their form, and is referred to as a qualified pension order. Public pensions generally follow the same rules as private pensions. The provisions have been reviewed by PERS & TFFR, and they are comfortable with it. There are several pension sections throughout the bill.

He stated that Mike Schwindt has an open line of communication, and that they met with Supportkids to discuss this issue. Supportkids have not bothered to change their amendments since January. ND law says that in every child support case, that the SDU pays the obligee personally. There is no federal or state law requirement that we honor the customer's request to send them money to their agent. Child support payments can't be garnished. The most important thing is the child support check gets to the family that needs it.

**Senator Lyson-** At least they get 66 cents on the dollar, they do get some money.

**Jim-** You are correct. We are not trying to prevent this tool from being available to families. We do not want to be known as the collection agent for these agencies.

**Senator Lyson-** If the collection agency collects the money, and holds out their amount and sends you the rest, the obligor only gets credit for what they sent you.

**Jim-** Correct. That is very much unfair to the obligor. Anything that comes to the SDU, we apply dollar for dollar to that debt. The SDU is the first step for those payments. The obligor gets credit for every dollar passed through the SDU.

**Chairman Lee-** If the statute were changed so the custodial parent could designate to whom the check was sent, that would mean any judgement issued by the court would have to include that provision?

**Jim-** Legally the payment would be to the custodial parent by paying their agency. We would be distributing to the obligee through their agent. If the committee was entertaining an amendment that would require us to redirect the money, we would ask that you remove section 1 from the bill.

**Chairman Lee-** If we were interested in permitting private collection agencies to do business in ND, but wanted the money to go to Child Support enforcement first, and then it would move on to the designee. Tell me how we need to amend the bill in your view to make that happen.

**Jim-** We do not feel comfortable redirecting because we are aware of the industry standard. If you change the law to redirect, we will honor that. As a result the private collection agencies will have to pay the SDU 100% of what they collect.

**Senator Lyson-** The argument to me, is if they are not getting anything, what are they losing?

**Jim-** The clientele of the companies are not limited to people who are not getting their payments.

The custodial parent has for the duration of the obligation, giving away a percentage of the kids' current support, when if it would have went through us, they would have got 100%.

**Chairman Lee-** Is there an interest on the committee with private agencies operating in the state? I would like some direction on this issue.

**Senator Brown-** It is more expensive than its worth.

**Senator Lyson-** Its the right of the custodial parent to be able to use the services, if they so desire.

**Senator Warner-** It is expensive, but we should not forbid these companies from doing business in our state. The only problem is who gets the check first, and what amount they receive.

**Jim-** If you do not pass section 1 of the bill, any of the agencies wanting to do business in the state would be required to be licensed. Section 1 is not necessary, there will be some protection in place. We would continue to pay the obligees and let them and their companies handle the contracts. It would be helpful to get a legislative decision on whether or not payments are redirected to private collection agencies..

**Chairman Lee-** Eric, do you have any states that the checks do not go to you, but instead go to the obligee?

**Eric-** It goes to our agency first.

**Senator Lyson-** I think the amendments need some more work done, before we take action. I don't see how we can take the rights away of people in this case.

**Eric-**The dollars are credited when they are sent to the state disbursement unit.

**Senator Dever-** Are most of your customers seriously past due?

**Eric-** Out of our 40,000 customers, the average length of time is 6 years, and more than \$60,000 behind in child support.

**Jim-** In North Dakota, it is not only the 4D cases that go through the SDU, all cases go through. We keep track of everything, all payments need to go through us for the state's official records.

**Eric-** Under the scenario that Mr. Fleming has proposed today, we would be unlikely to do business in the state. We would not be likely to collect our fees and figure out the contract balances.

**Chairman Lee-** We will wait on the amendments for the re-engrossed bill. (She briefly ran through each section of the bill) The main section of the bill that we need to focus on is Section 1.

**Jim** explained where commas needed to be inserted in various sections of the bill.

**Chairman Lee closed the meeting on HB 1172. No action was taken.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1172

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 14, 2005

Tape Number	Side A	Side B	Meter #
1		x	1200-5500
2	x		4300-4830

Committee Clerk Signature



Minutes:

Chairman Lee reopened discussion on HB 1172. All members were present.

Sen. Warner: I think if we don't do anything, then we have a hard time forbidding them from practicing at all in the state. They could still operate from another state couldn't they?

Chairman Lee: They are already.

Sen. Lyson: If we kill the bill they can operate right now. I have a little heart burn with that. I think we should have some sort of restrictions on them.

Chairman Lee: I agree.

Vice Chairman Dever: I think they should be allowed to but with some controls.

Sen. Lyson: I don't agree with Jim's conditions because he was making it so it's impossible for them. There has to be a way to do this properly.

Attachment 1 was passed out.

Chairman Lee: On the new amendment, they really wanted section 1 deleted and they didn't put that in the amendment. Any thoughts on that?

Sen. Brown: Who wanted section 1 out?

Chairman Lee: SupportKids.

Sen. Brown: That's a good reason to leave it in.

Sen. Lyson: Carlee says that private child support collection agencies have no obligation to be licensed if either the custodial parent or non-custodial parent resides in North Dakota. But we have to have them licensed. Right now, the way the law is written, they don't even have to be licensed.

Sen. Brown: That's what section 1 does -- must be licensed?

Chairman Lee: And because they're collecting, financial institutions will develop the rules and we don't have to be too specific about what the rules of licensure would be because that's who would be developing the rules. Because it is a collection agency.

Vice Chairman Dever: We should check with the Secretary of State to make sure SupportKids has a corporate license.

Sen. Lyson: If they have a corporate license, they are probably bonded, right?

Sen. Brown: I don't think so, and I don't know if they'd be registered necessarily, if they're headquarters out of Texas.

Chairman Lee asked the intern (sub), Peggy, to check if SupportKids was registered with the Secretary of State or with the Department of Financial Institutions.

There was some general discussion on registration and licensure. They started looking at the information provided by Carlee (Research Points: HB 1172)



Chairman Lee reminded the committee that they had letters from the Child Support Enforcement council, David Conder and Mary Anne Best who are opposed to the bill. These documents were reviewed and discussed. They also discussed the proposed amendments.

Senator Brown moved DO PASS an amendment (attachment 3), seconded by Senator Warner

VOTE: 5 yeas, 0 nays, 0 absent

Senator Brown moved DO PASS the amended bill and rerefer to Appropriations, seconded by Senator Warner

VOTE: 5 yeas, 0 nays 0 absent      Carrier: Senator Warner

Chairman Lee reopened discussion on the bill. Peggy had the information that Chairman Lee requested earlier.

Peggy: I called the Secretary of State and the department of financial institutions. The Secretary of State's office said that SupportKids is not registered in North Dakota. And at the department of financial institutions, and they said that SupportKids did not have a collection agency license in North Dakota.

Chairman Lee: So why do I have notes about the department of financial institutions would implement rules? I wrote that down when we discussed this bill.

Sen. Lyson: I remember when you brought that up and wrote it down.

There was further discussion on licensing and lawyers and the person who testified who used SupportKids to collect child support for her.

Date: 3-14-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1172

Senate Human Services

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *motion to Pass Amendment*

Motion Made By *Brown* Seconded By *Sen Warner*

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) 5 No 0

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

*Take out sect. 5 & Plus grammatical changes  
underscored*

Date: 3-14-05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1172

Senate Human Services

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as amended

Motion Made By Sen Brown Seconded By Sen Warner

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) 5 No 0

Absent

Floor Assignment Sen. Warner

If the vote is on an amendment, briefly indicate intent:

re-refer to approp

**REPORT OF STANDING COMMITTEE**

HB 1172, as reengrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1172 was placed on the Sixth order on the calendar.

Page 1, line 6, remove "subsection 5 of section 14-09-25,"

Page 3, remove lines 13 through 29

Page 4, line 2, after "program" insert an underscored comma

Page 4, line 3, after "plan" insert an underscored comma

Page 4, line 18, replace "are" with "is"

Renumber accordingly

2005 SENATE APPROPRIATIONS

HB 1172

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1172

Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 22, 2005

Tape Number	Side A	Side B	Meter #
1	x		-4,958

Committee Clerk Signature



Minutes:

**Chairman Holmberg** called the hearing to order on HB 1172.

**Jim Flemming, Director, Child Support Office**, testified in support of HB 1172, indicated that this bill and HB 1173 are on child support enforcement. This bill has a fiscal note of \$4,000 for minor computer projects.

**Chairman Holmberg** indicated this bill comes with a minimal amount of money and that Senator **Judy Lee** has additional information on HB 1173. He indicated that both bills will go to subcommittee.

**Ralph Reimers, citizen, Grand Forks**, testified on HB 1172, indicating he had some suggested changes, some of which are an infringement on rules of civil procedure. Areas of concern are Section 2, page 2, paragraph 3 is an infringement on rules of civil procedure; page 3 section 3 deals with reasonable health insurance the words in place of should be included; bottom of page 3, in event of a former spouse becoming deceased, the support should go to something other than

Page 2

Senate Appropriations Committee

Bill/Resolution Number 1172

Hearing Date March 22, 2005

the estate of; and concerns on page 4, civil penalties to employers who don't respond should be struck out.

**Chairman Holmberg** closed the hearing on HB 1172.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1172

Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 25, 2005

Tape Number	Side A	Side B	Meter #
1	a		-236

Committee Clerk Signature



Minutes:

**Chairman Holmberg** called the discussion to order on HB 1172.

**Jim Fleming, Division of Human Services**, testified on HB 1172, presenting a quick overview of the fiscal impact, indicating that most of the changes affected policy. The purpose of the bill is to protect consumers from private child support collectors.

Discussion ensued about tribes taking over child support collections and the involvement of Division of Human Services.

**Senator Tallackson** moved a DO PASS, **Senator Fischer** seconded. A roll call vote was taken resulting in 12 yes, 2 no and 1 absent. The motion carried. **Senator Warner** will carry the bill.

**Chairman Holmberg** closed the discussion on HB 1172.



Date  
Roll Call Vote #:

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 1172**

Senate **SENATE APPROPRIATIONS**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

*DP*

Motion Made By

*Tall*

Seconded By

*Fischer*

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	/		SENATOR KRAUTER		/
VICE CHAIRMAN BOWMAN	/		SENATOR LINDAAS	/	
VICE CHAIRMAN GRINDBERG	/		SENATOR MATHERN	/	
SENATOR ANDRIST	/		SENATOR ROBINSON		/
SENATOR CHRISTMANN	/		SEN. TALLACKSON	/	
SENATOR FISCHER	/				
SENATOR KILZER	/				
SENATOR KRINGSTAD	/				
SENATOR SCHOBINGER	/				
SENATOR THANE	/				

Total (Yes)

*12*

No

*2*

Absent

*1*

Floor Assignment

*Warner*

*HMS*

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
March 25, 2005 10:44 a.m.

Module No: SR-55-6195  
Carrier: Warner  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1172, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed HB 1172, as amended, was placed on the Fourteenth order on the calendar.

2005 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1172

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1172**

House ~~Human~~ Services Committee

☒ Conference Committee

Hearing Date **April 11, 2005**

Tape Number

**1**

Side A

**x**

Side B

Meter #

**0**

Committee Clerk Signature

*Ganire Stein*

Minutes:

**REP. PORTER, CHAIRMAN** Called the conference committee to order.

**REP. PORTER** Stated that after last Friday's meeting the Independent Community Bankers and the department got together regarding the area of the lien in section 4, which was the item of contention as we adjourned last meeting. That language has been addressed by the Independent Bankers and the e-mail that I received is that everyone is O.K. with the language in Section 4 now. The other area which was addressed, was already changed in Section 8, subsection 1, where the arrears registry is still at \$2,000 for two months, and to be listed now requires \$10,000.

**SEN. LEE** Asked if there was any concerns with the amendments.

**SEN. LYSON** Asked what happens when the bank receives a judgement from the IRS.

**REP. PORTER** He thought the language in Section 4, is what this bill left the House with. We could ask Mr. Flemming to address the order with which this section will work.

**JIM FLEMMING** There is a section in current law that is not being amended in the bill, that I

believe answers the question. Referred to new subsection 4, former subsection 3. A lien under this section is perfected when the financial institution is served with notice of the lien. There is a section in existing code that is not in the bill before you. Went on to read the section. If the IRS lien is perfected first, it has priority.

**SEN. LYSON** If the state's lien is perfected first, we could supercede a lien from the IRS?

**JIM FLEMMING** I am not sure what type of overall global, priority, a federal IRS lien is going to have.

**REP. PORTER** Stated the major changes were in section 4, and in 2b, it also changed section 8.

**MIKE SCHWINDT** Spoke from the sidelines, stating there is an add-on in Section 3.

**JIM FLEMMING** Stated without the new language in there, because we are looking at this as a third party wants to buy an asset subject to a lien, they are not looking to the lien, to know how much is owed, they are just looking to the lien, saying I better check with child support because there is a lien on the property. When they call child support, the language originally in the bill would have said, the notice of lien, or the lien automatically grows when there is a new months arrears. It would tie up the whole asset. That is the reason for the exception. Mr. Flemming gave different scenarios of examples.

**SEN. LEE** Made a motion that the Senate recede from their amendments and that we amend Version Two B along with the other amendments which came from the Senate.

**SEN. WARNER** Second the motion. Motion carried by voice vote.

**JIM FLEMMING** Explained the next set of amendments for Version One.

**REP. KALDOR** Asked, aren't we talking about what they owe, but what can be used for the lien.

**JIM FLEMMING** Let's assume that we have attached an account that is exempt from process, we didn't know the exemption applied, but under protest, it was pointed out that that is true. We have to leave the account alone, but the obligore is still sitting out there with arrearage.

**REP. KALDOR** It would be one thing if the individual won under the protest period, they still had the arrearage, and interest is still accumulating on the arrearage, if they lost and gave up that asset, then the interest rate shouldn't have accumulated during the protest period.

**SEN. WARNER TO MR. FLEMMING** None of these fees paid for these different transactions along the way, none of these fees are coming from money owed to the obligee.

**JIM FLEMMING** Let's assume the account has one thousand dollars in it, and our lien is two thousand dollars, the bank would give us nine hundred ninety seven and we would mark the lien partially satisfied with the tune of nine hundred ninety seven dollars. Likewise, with the proceeds of an execution, the fees are deducted from the proceeds of the sale of the asset, only the balance turned over as a disbursement to us. The obligee is not charged for those fees or charges, they are taken off the top.

**SEN. WARNER** Was concerned that, if there was a federal componant, the money was coming out of department to the federal government, and the collection of those fees were not being diverted to the sheriffs and other officials.

**JIM FLEMMING** No, it is traditional judgement collection is that the judgement debtor is responsible for the amount of the debt plus the fee on top of it.

**REP. KALDOR** Asked what an example of an exemption is.

**JIM FLEMMING** With child support, there is not a lot that is exempt. Read several exemptions. With regard to the accounts, if you have insurance benefits, of any of the items he read off, that would be exempt.

**SEN. LYSON** Stated he still had a problem with the Attorney General's Office stating that these meet the minimum standards of due process. He wasn't sure he wanted a state agency to meet the minimum standards.

**SEN. LEE** stated it is a special challenge to collect child support from those individuals who are self-employed or who work for cash. We are trying to equalize all of those folks. The Attorney General's Office has assured us that the criteria has been met. I am trying to figure out what we can do to make this better so you are satisfied with it. There isn't any ladder of standards for us to work with.

**SEN. LYSON** There is no way this will be completely acceptable to me. I believe state agencies should meet more than minimum standards of doing anything that we do. I don't believe what this thing does, will bring more dollars into Workmen's Comp. It may create a little less work but will not bring one penny more in. Along with that, I think, some place along the line, we are going to have to start looking at who all gets hurt. All we looked at is the child support, and get the money. Some place along the line we are going to have to start looking at causes of what is causing all of these arrears in child support. Until we start doing that, it will go from 169 million to 209 million, like last time. He related to a personal experience with someone he knows.

**SEN. LEE** Would you be willing to include Section B of this, if you find Section A unacceptable?

**SEN. LYSON** My biggest problem with the way this is happening, is that, the child support due process in North Dakota has never been done right. The problem is coming from the Attorney General's Office. There is a reason we have due process in civil actions, that's what this is. Everybody has to be treated fairly.

**REP. PORTER** Which section do you have the biggest problem with, Section A, Section B

**SEN. LYSON** Section B, there is nothing wrong with that. With Section A, Section B is an absolute necessity. Without Section A, Section B doesn't even have to be there.

**SEN. LEE** Asked Jim Flemming and Mike Schwindt what needs to be done if they exclude Section A.

**JIM FLEMMING** Stated his understanding of the current execution process is that when a sheriff executes the writ, the debtor has ten days to claim the exemption. I am thinking, provision B, alone, even without A, would give the obligore another twenty days longer than is in the existing execution process. It is governed as much by custom of counties, then by the letter of the law. Right now, we are geared up, as soon as the money comes in the door, we spit it out. There is really no precedent here in terms of execution, for hanging onto the money, pending the protest.

**REP. PORTER** Asked how Section A changes how things are currently done.

**JIM FLEMMING** Section A, takes the existing execution process and removes the docketing, and also removes the involvement of the sheriff. Instead of a writ of execution, handed to the sheriff, it says, please execute on this account, and the sheriff goes to the bank and takes the money out, we would be dealing with the bank directly.

**SEN. LYSON** There is no challenge after the sheriff has served the execution.



**REP. KALDOR** I am trying to determine the difference between what is being attempted here and the current terms of the level of due process. As it is being described, I am not seeing the distinction, whether or not this meets minimum due process, but the does the current model meet minimum due process as well.

**SEN. LYSON** Stated the Attorney General's Office went through many court cases to come up with that wordage. There is one thing that is for sure, if people are going to execute and levy on a checking account, without going through the steps of civil process, that we do now, I think, personally, that is the problem, there is no third party there, one place is doing it all.

**REP. KALDOR** With the sheriff being the third party role, does the sheriff have any discretion in their actions, if they believe that somehow, what the department is moving to do, is either an injustice or an over reach of their authority?

**SEN. LYSON** No, not at all. If the execution is issued and turned over to the sheriff, he must execute.

**SEN. WARNER** Since we have spoken with the Attorney General, we have added language which would take ten days, they have extended the period of review by the courts which would take thirty days, this seems to be a much more involved and evolved due process proceeding. I have a concern that since it has become so much longer then it was under current law, if the judgement is held against the obligore, I honestly believe, they should not be charged interest. I would be more comfortable if, in the case where they lost, that the interest would be forgiven.

**REP. PORTER** Asked Mike Schwindt, in Section B, the third line, should the word "consider" be changed to "dispersed", would that cover Sen. Warner's concern?

**MIKE SCHWINDT** Stated they would not charge interest , he thought they had the authority to do that.

**SEN. LEE** Stated, I think we all want due process for these people, but we all need to be comfortable, or as much as possible, with whether or not we will go forward with the Section A portion. In response to Rep. Kaldor's question, that the sheriff doesn't have any latitude, I guess I have a question for Sen. Lyson and Mr. Schwindt. If the sheriff has to do it, what do we have to do to get the benefits that come from the obligore in Section A, if the sheriff doesn't have any latitude anyway, are we giving up something if we give up all of Section A?

**SEN. LYSON** The third party that comes in to do the execution and levy by due process, that I believe is so important, rather than having one agency doing everything, I think that is where it is at. These other things in here, strictly make it sound good, but it is all in that one area. That is where all of the problems come in. If they tie up your bank account and issue an execution, and the sheriff executes on that execution, with a levy, and takes out the money, they would get when they are served everything, they wouldn't get anything more, all of these things would be gone. They have had their due process by getting served and getting their information.

**REP. PORTER** What part, with the first class, which part is the problem?

**SEN. LYSON** First class mail has been pretty standard for some time. The due process for the judgement, is what they are talking about. They can still do the judgement like that. The sheriff would execute personally, when they serve.

**REP. PORTER** What are the costs for the Clerk of Court to do the docketing and then the sheriff to do the serving in the existing system?

**SEN. LYSON** That has changed since I got out. One thing you might think about doing, the sheriff's have an in-service training on a yearly basis on the civil process, to say that the executions and levies are done differently in the counties, is not true. The execution charge for the sheriff is set by statute.

**JIM FLEMMING** Stated he thought the sheriff's fee was twenty five dollars and there are additional fees, such as mileage and publication, etc. The docketing is no charge.

Mr. Flemming gave examples of situations that arise.

**SEN. LEE** Asked if it would be acceptable if the sheriff is involved with the levy.

Committee members had discussion back and forth relating to ideas that would make the process acceptable to everyone.

The conference committee will meet at another time.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1172

House Human Services Committee

☒ Conference Committee

Hearing Date 4/12/05

Tape Number

1

Side A

xx

Side B

Meter #

0-8.5

Committee Clerk Signature



Minutes: 6 members present.

**Rep. Porter:** Called the meeting to order. Attendance was taken. Everybody received an e-mail, and there were copies here if you didn't get one of the new version. Right now we're going to be discussing 1A and 1B, and just so everybody is aware, after our discussions yesterday, 1B was changed, and it was changed on line 3, where the word disburses is there now, was yesterday had the word consider in there, and now it's disburse, and then the last sentence, where it starts "that interest does not accrue under section 28.20-34, after the funds are received by the state agency" was added after our discussion yesterday. So that, if during that protest period, once the money is in the hands of the State Disbursement Unit, then the interest clock is off until the protest period expires, is what the discussion was yesterday in regards to that. Just so that everybody is aware of the changes. We will start back again with 1A.

**Sen. Lee:** May I have a copy of that, please. I've got the A part, I just need the B part.

**Rep. Porter:** I guess I would open it up for discussion on either 1A or 1B, whichever the committee wants to start with. Based on our discussion yesterday, I asked the Department to update that language so that the word "consider" was replaced with "disbursed" and that the last sentence was added so that once the State is holding the money, and the protest period, that the interest clock is turned off.

**Sen. Warner:** Whether or not the ultimate judgment was for the obligor or the obligee.

**Rep. Porter:** Correct.

**Sen. Warner:** That sounds reasonable.

**Rep. Porter:** No, and you're talking 30 days or less.

**Sen. Lee:** I think that we've certainly improved on what we had at the beginning, and for the purposes of moving on here, I would move that we adopt version 1A, dated April 11, 2005.

**Sen. Warner:** Seconded.

**Rep. Porter:** Motion made by Sen. Lee and seconded by Sen. Warner, for version 1A dated April 11, 2005. Discussion. Hearing none, motion carried. We have Version 1A attached to the bill. All that is left is the protest period of Version 1B.

**Rep. Nelson:** I would move Version 1B, dated 4/11/05.

**Rep. Kaldor:** Seconded.

**Rep. Porter:** Motion made by Rep. Nelson and seconded by Rep. Kaldor, for version 1B dated 4/11/05. Discussion. Hearing none, motion carried. We have Version 1B attached to the bill. Yesterday's motion was a technical motion that 2B + the Senate had brought, and then these amendments, and I guess now, just so that we have a motion, recorded roll call motion to take to the Floor with the Conference Committee report is what we would need.

mediator that the obligor could come to and say, I'm still not getting my visitation, when I do get my visitation she won't give me any clothes to take home with me, and be able to try and have a mediator try to work these out between the two. I think right now, every time we turn around, we're hurting the children that we're trying to deal with here. I honestly believe that we're just creating more of a problem than we're solving. I think we have children hating their father, hating their mother and hating the system. When the children start to hate the system, we've got mothers-in-law and fathers-in-law, and grandparents that hate the State too; and we've created a monster here and we better start looking at it.

**Rep. Porter:** I can't disagree with that, Sen. I think that in these proceedings, we try to once remove ourselves, but there is always a certain level of animosity that exists in what goes on here, and there had to be something that caused two people, who were together and had a child, to suddenly not be together, and sometimes that hate and anger is more than we can accomplish. If a mediator system, or social services involvement or something helps to remove some of that animosity, I think that I would be all for it. You're right, I think that in the end, when those situations happen where that animosity goes down to the children, that we just end of making angry children, and children don't deserve to be angry. I don't disagree with that. I definitely appreciate everybody's time and effort on this, these are always tough issues to deal with from sitting up here in this particular place and trying to get these passed so they work for the best of the children. We are adjourned.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1172

That the Senate recede from its amendments as printed on page 1344 of the House Journal and page 847 of the Senate Journal and that Reengrossed House Bill No. 1172 be amended as follows:

Page 1, line 3, after the first comma insert "three new sections to chapter 50-09,"

Page 1, line 6, replace "subsection 5 of section 14-09-25" with "section 14-09-09.10, subsections 1 and 2 of section 28-21-05.2" and remove "and"

Page 1, line 7, after the first comma insert "35-34-02, 35-34-05, 35-34-09, and", after the second comma insert "subsection 2 of section 50-09-08.6, subsection 1 of section 50-09-32,", and after "and" insert "section"

Page 1, line 8, after the first comma insert "account liens,"

Page 3, replace lines 13 through 29 with:

**"SECTION 5. AMENDMENT.** Section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.10. Definitions.** For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. Arrears registry" means the registry maintained under section 16 of this Act.
2. "Business day" means every day that is not a Saturday or legal holiday.
- ~~2.~~ 3. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
- ~~3.~~ 4. "Child support agency" means the county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards, in execution of the county social service board's duties under subsection 5 of section 50-09-03.
4. 5. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
- ~~5.~~ 6. "Disposable income" means gross income less deductions required by law for taxes and social security.
- ~~6.~~ 7. "Employer" means income payer.

- ~~7-~~ 8. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.
- ~~8-~~ 9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
- ~~9-~~ 10. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.
- ~~10-~~ 12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
- ~~11-~~ 13. "Obligor" means any person owing a duty of support.
- ~~12-~~ 14. "Past-due support" means child support that is not paid by the earlier of:
- a. The date a court order or an order of an administrative process established under state law requires payment to be made; or
  - b. The last day of the month or other period the payment was intended to cover.
- ~~13-~~ 15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.
- ~~14-~~ 16. "Public authority" means the department of human services in execution of its duties pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
- ~~15-~~ 17. "System implementation date" means the date the public authority certifies to the secretary of state and the legislative council that the statewide automated data processing system, established under section 50-09-02.1, is operating."

Page 4, line 2, after "program" insert an underscored comma

Page 4, line 3, after "plan" insert a underscored comma



Page 4, line 18, replace "are" with "is"

Page 4, after line 23, insert:

**"SECTION 8. AMENDMENT.** Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

1. Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is not current in a court established plan to repay the unpaid child support judgment is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may ~~omit~~:
  - a- The seal of the court;
  - b- The subscription of the clerk of that court;
  - c- The attestation in the name of the judge of the court that entered the judgment;
  - d- A statement of the courts and counties to which the judgment has been transcribed; and
  - e- If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 which has been certified under section 14-08.1-08."

Page 5, after line 15, insert:

**"SECTION 11. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-02. Lien for past-due child support.** When a past due child support obligation is at least six times the monthly child support obligation and the an obligor is not current in a court established plan to repay the past due support listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

**SECTION 12. AMENDMENT.** Section 35-34-05 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-05. Account lien.**

1. In the case of an account maintained in a financial institution, the public authority may establish a lien on the account by serving a notice of lien upon the financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the financial institution. The notice must be in a form prescribed by the public authority and contain the name, social security number, or other taxpayer identification number and last-known address of the obligor, the amount of past-due support for which a lien is claimed, and any other information required by the public authority. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon service of the notice of lien on a financial institution in accordance with this section, the lien attaches to accounts of the obligor maintained in the financial institution, except to the extent necessary to and freezes all subsequent withdrawals from the account except for funds in excess of the amount of past-due support for which a lien is claimed under this section and as provided in subsection 3.
3. Notwithstanding a freeze on an account under subsection 2, the financial institution may satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with notice of lien, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with notice of lien.
4. A lien under this section is perfected when the financial institution is served with notice of the lien.

**SECTION 13. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-09. Immunity from liability.** A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property or discharges the obligation to the public authority, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, is immune from suit or any liability to the obligor or other person arising from the surrender or payment under any federal or state law. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section."

Page 6, after line 4, insert:

**"SECTION 16.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Child support arrears registry.** The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrears registry" means the registry maintained under this section.

**SECTION 17. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
  - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
  - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less listed on the arrears registry; or
  - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.

**SECTION 18.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Child support deduction order.**

1. The state agency, directly or through agents or child support agencies, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.
2. The state agency, directly or through agents or child support agencies, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.
4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.
5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with the order.
6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the

amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.

7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section.

**SECTION 19.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Protest period.** Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 or section 18 of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

**SECTION 20. AMENDMENT.** Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than ~~twenty-five~~ ten thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)

Bill Number HB 1177 (, as (re)engrossed):

Date: 4/12/05

Your Conference Committee Human Services

For the Senate:

For the House:

YES / NO

YES / NO

Sen J Lee ✓  
Sen Dixon ✓  
Sen Warner ✓

Chrm. Rep Porter ✓  
Rep Nelson ✓  
Rep Kaldor ✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1344 --

and place on the Seventh order.

✓, adopt (further) amendments as follows, and place HB 1177 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) HB 1177 was placed on the Seventh order of business on the calendar.

DATE: 4/13/05

CARRIER: Rep Porter

LC NO. 5B217.0307 of amendment

LC NO. of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION MADE BY: Sen J Lee

SECONDED BY: Sen Warner

VOTE COUNT 6 YES 0 NO 0 ABSENT

Revised 4/1/05

**REPORT OF CONFERENCE COMMITTEE**

**HB 1172, as reengrossed:** Your conference committee (Sens. J. Lee, Lyson, Warner and Reps. Porter, Nelson, Kaldor) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1344, adopt amendments as follows, and place HB 1172 on the Seventh order:

That the Senate recede from its amendments as printed on page 1344 of the House Journal and page 847 of the Senate Journal and that Reengrossed House Bill No. 1172 be amended as follows:

Page 1, line 3, after the first comma insert "three new sections to chapter 50-09,"

Page 1, line 6, replace "subsection 5 of section 14-09-25" with "section 14-09-09.10, subsections 1 and 2 of section 28-21-05.2" and remove "and"

Page 1, line 7, after the first comma insert "35-34-02, 35-34-05, 35-34-09, and", after the second comma insert "subsection 2 of section 50-09-08.6, subsection 1 of section 50-09-32,", and after "and" insert "section"

Page 1, line 8, after the first comma insert "account liens,"

Page 3, replace lines 13 through 29 with:

**"SECTION 5. AMENDMENT.** Section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.10. Definitions.** For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Arrears registry" means the registry maintained under section 16 of this Act.
2. "Business day" means every day that is not a Saturday or legal holiday.
- ~~2-~~ 3. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
- ~~3-~~ 4. "Child support agency" means the county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards, in execution of the county social service board's duties under subsection 5 of section 50-09-03.
- 4- 5. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
- 5- 6. "Disposable income" means gross income less deductions required by law for taxes and social security.
- 6- 7. "Employer" means income payer.
- 7- 8. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health

association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.

- ~~8-~~ 9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
- ~~9-~~ 10. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.
- ~~10-~~ 12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
- ~~11-~~ 13. "Obligor" means any person owing a duty of support.
- ~~12-~~ 14. "Past-due support" means child support that is not paid by the earlier of:
- a. The date a court order or an order of an administrative process established under state law requires payment to be made; or
  - b. The last day of the month or other period the payment was intended to cover.
- ~~13-~~ 15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.
- ~~14-~~ 16. "Public authority" means the department of human services in execution of its duties pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
- ~~15-~~ 17. "System implementation date" means the date the public authority certifies to the secretary of state and the legislative council that the statewide automated data processing system, established under section 50-09-02.1, is operating."

Page 4, line 2, after "program" insert an underscored comma

Page 4, line 3, after "plan" insert a underscored comma

Page 4, line 18, replace "are" with "is"

Page 4, after line 23, insert:

**"SECTION 8. AMENDMENT.** Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

1. Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is not current in a court established plan to repay the unpaid child support judgment is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may ~~omit:~~
  - a- The seal of the court;
  - b- The subscription of the clerk of that court;
  - c- The attestation in the name of the judge of the court that entered the judgment;
  - d- A statement of the courts and counties to which the judgment has been transcribed; and
  - e- If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 which has been certified under section 14-08.1-08."

Page 5, after line 15, insert:

**"SECTION 11. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-02. Lien for past-due child support.** When a past due child support obligation is at least six times the monthly child support obligation and the an obligor is not current in a court established plan to repay the past due support listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

**SECTION 12. AMENDMENT.** Section 35-34-05 of the North Dakota Century Code is amended and reenacted as follows:



**35-34-05. Account lien.**

1. In the case of an account maintained in a financial institution, the public authority may establish a lien on the account by serving a notice of lien upon the financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the financial institution. The notice must be in a form prescribed by the public authority and contain the name, social security number, or other taxpayer identification number and last-known address of the obligor, the amount of past-due support for which a lien is claimed, and any other information required by the public authority. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon service of the notice of lien on a financial institution in accordance with this section, the lien attaches to accounts of the obligor maintained in the financial institution, except to the extent necessary to and freezes all subsequent withdrawals from the account except for funds in excess of the amount of past-due support for which a lien is claimed under this section and as provided in subsection 3.
3. Notwithstanding a freeze on an account under subsection 2, the financial institution may satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with notice of lien, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with notice of lien.
- ~~3.~~ 4. A lien under this section is perfected when the financial institution is served with notice of the lien.

**SECTION 13. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-09. Immunity from liability.** A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property or discharges the obligation to the public authority, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, is immune from suit or any liability to the obligor or other person arising from the surrender or payment under any federal or state law. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section."

Page 6, after line 4, insert:

**"SECTION 16.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support arrears registry. The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrears registry" means the registry maintained under this section.

**SECTION 17. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
  - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
  - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less listed on the arrears registry; or
  - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.

**SECTION 18.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support deduction order.

1. The state agency, directly or through agents or child support agencies, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.
2. The state agency, directly or through agents or child support agencies, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.
4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.
5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, or other obligations of the obligor

based upon written agreements or instruments made or issued by the obligor before the financial institution was served with the order.

6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.
7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section.

**SECTION 19.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Protest period. Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 or section 18 of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

**SECTION 20. AMENDMENT.** Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than ~~twenty-five~~ ten thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person."

Renumber accordingly

Reengrossed HB 1172 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

HB 1172

**TESTIMONY**  
**HOUSE Bill 1172 - DEPARTMENT OF HUMAN SERVICES**  
**HOUSE HUMAN SERVICES COMMITTEE**  
**CLARA SUE PRICE, CHAIRMAN**  
**JANUARY 11, 2005**

Chairman Price, members of the House Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Division of the Department of Human Services. I am here to ask for your favorable consideration of House Bill 1172.

Section One addresses private collection agencies who attempt to enforce child support obligations for a fee charged to the family. As this industry grows, we also see a national trend for state legislatures to pass laws ensuring that the families are protected. The intent of the proposed new section is not to prohibit these companies from operating in North Dakota, but to protect consumers and ensure that the private collection agencies' activities do not interfere with the efforts of government child support enforcement programs.

The proposed section confirms that these agencies are subject to North Dakota law just like collection agencies that collect other debts and must obtain a license from the Department of Financial Institutions. In addition, due to the uniqueness of child support debts and the fact that the child support enforcement program is frequently enforcing the same debt at the same time, some additional provisions are proposed.

In legislative hearings for many years, the child support enforcement program and the Legislative Assembly have discussed that 1) child support payments should first be applied to the amount due in the current month before being applied to any arrears, 2) the right to current child support belongs to the children and cannot be waived or negotiated by the parents, and 3) all child support payments must be paid through the State Disbursement Unit (SDU) for proper recording and disbursement.

As a matter of public policy, attorneys are not allowed to charge contingency fees for the collection of a current monthly child support obligation. This bill would apply that policy consistently to private collection agencies as well. To avoid this public policy and state laws requiring that current child support be paid before arrears, we are aware that some agencies' contracts with families specifically provide that any collections received will first be applied to arrears. This denies children the current support they need and violates the distribution priority established by the Legislature. The bill would make it even more clear that such a practice is prohibited.

The bill would also ensure that all payments are properly processed through the SDU. Right now, we know that many private collection agencies do not inform us of payments that have been received and, as a result, the state's official payment records continue to show the obligor as delinquent even when money has been collected from the obligor or the obligor's employer by the private collection agency. In those cases, either the obligor is denied credit because the payment was not made through the SDU as required by state law and the court order, or else a worker in the SDU has to spend hours to "fix" the payment records to reflect a payment that was received by the private collection agency but not processed through the SDU. This situation can be avoided easily if the private collection agency turns over all collections to the SDU for proper recording and disbursement. If a collection agency does not comply with the new section, the obligor is not entitled to credit for the collection but has a claim against the agency for three times the amount withheld by the agency.

Some private collection agencies regularly ask us to redirect child support disbursements to the agency instead of sending the money directly to the family. Unless this bill is passed, we can't do that because we know that many standard contracts allow the agency to retain a percentage of a current child support payment. To redirect the disbursement to the agency on behalf of the family

would assist in the distribution of child support that is contrary to state law. If we are able to program our system in the future to disburse payments of current child support to the families and unassigned arrears to a private collection agency, this bill gives the Department discretion to adopt rules allowing for payments to be redirected. This ensures that the children receive the current support they need, that any child support collections on assigned arrears are properly retained by the State rather than paid to the private collection agency, and that the State's payment records are accurate. In the meantime, the private collection agencies are free to collect their fees from the family.

Finally, we are aware that some agencies' standard contracts make it very difficult for a family to terminate its contract with the agency. The bill would protect families by allowing them to terminate an agreement on thirty days' notice without a cancellation fee.

We are offering an amendment to this section at the suggestion of the Department of Financial Institutions to clarify the interaction of the new section with existing state law.

Section Two proposes to make the mailing of notices of arrears or scheduling of contempt hearings optional rather than mandatory for the clerks of court. Under current law, whenever one payment is missed, the clerk is required to mail a notice of arrears or schedule a contempt hearing. The fact that one payment is missed does not necessarily mean an obligor is deliberately violating the court order. For example, an obligor may change jobs and assume that the new employer's payroll cycle will "take care of it," when in fact the payment is not withheld by the employer and paid through the SDU until the next month. Because current law requires the clerk to act even when one payment is missed, a lot of time on the part of judges, clerks, state's attorneys, and parents is spent on contempt hearings that are unnecessary. When hearings for 20 or 30 obligors are scheduled at one time, it is difficult to separate those who are truly in

contempt of court from those who have simply been careless in making sure their payments are made on time. This law will give the clerks of court the discretion to refrain from taking any action unless requested by the family or the child support enforcement program. It is our hope that making contempt proceedings more selective will also make those proceedings more effective.

Section Three amends current law in anticipation of a possible amendment to the federal regulations that define "reasonable cost" for health insurance. Currently, unless insurance coverage is available to the family for no or nominal cost, an obligor is required to carry insurance if insurance is available on a group basis or through the obligor's employer or union even if the coverage costs several hundred dollars per month. If the federal regulation is changed, this amendment will allow the Department of Human Services to establish a different definition by administrative rule rather than wait to implement any new definition until 2007.

Section Four proposes to extend the deadline for bringing contempt of court proceedings against an income payer from one hundred and eighty days to one year. This would give the child support enforcement program more time to complete settlement negotiations with an income payer.

Section Five creates a new fund in the state treasury for child support collections that we are unable to disburse within three years. Currently, these payments are deposited with the Unclaimed Property Division. At that point, the deposits in IV-D cases are considered by the federal government to be revenue to the State from operation of the child support enforcement program and the federal government wants its share of those deposits from the reimbursement it provides for our program's operations. For example, if total of \$30,000 in payments in IV-D cases is deposited with the Unclaimed Property Division, there is a \$19,800 deduction from the federal funds received by the Department of Human Services. This provision does not involve a lot of money, and as the fiscal note indicates, the amount that is deposited in this fund would get smaller and smaller now that



we have gone to almost exclusively an electronic payment process. Nevertheless, if the Department is going to incur the cost of these unclaimed payments, we propose that the funds be used for outreach projects, a process Massachusetts enacted with the concurrence of custodial parents, that might not otherwise be a funding priority rather than deposited with the Unclaimed Property Division.

Section Six is one of two provisions in this bill regarding judgment interest and pertains to arrears management. As a result of legislation that was passed in the last two legislative sessions, the official payment records that we maintain are much more accurate regarding the judgment interest that is owed in each case. Unfortunately, with judgment interest at 12% per year on over \$200 million in child support arrears owed in North Dakota, another \$2 million in interest is added to that balance every month. This makes it even more important that we take a practical and realistic approach to how we manage this arrears balance.

Now that our payment records contain more accurate information, the next step is to look at ways to use the accrual of judgment interest as an incentive for obligors to pay their child support arrears. This provision will give the child support enforcement program the ability to initiate an amnesty program and enter into payment plans with obligors that suspend the accrual of judgment interest as long as the obligor makes the payments required in the payment plan. In short, we would have additional ability to work with obligors, if they are willing to work with us.

The second part of Section Six provides guidance on distribution of child support payments when the custodial parent is deceased. Our program has existed for long enough that we are dealing with more parents, both obligors and obligees, who have died. This proposed new subsection would allow the state's payment records to be updated to reflect a new payee without requiring the obligee's family or heirs to go back to court, unless one of the children is a minor.

Sections Seven, Nine, Eleven, Thirteen, and Fifteen resolve inconsistencies in current law regarding the interaction between the child support enforcement program and public retirement plans. Federal law requires that our program attach "public and private retirement funds" to satisfy a child support obligation. Again, as our program ages, more and more obligors are reaching retirement age and receive retirement benefits instead of other income. The first step in attaching retirement funds is to know who the retirees are. Sections seven, eleven, and fifteen amend current law to clarify that public retirement plans, like other government agencies and private retirement plans, should respond to the child support enforcement program's requests for information about retirees. Section nine, as the next step, resolves a conflict in state law and reiterates that public retirement funds may be attached through income withholding or other legal process for collection of child support. Finally, section fifteen authorizes the child support enforcement program to issue domestic relations orders (QDROs) to private and public retirement funds. We have worked with the agencies that operate these public retirement plans and understand that they do not object to these provisions.

Section Eight is the second provision on judgment interest. In previous legislative sessions, legislators have commented that the current judgment interest rate may be too high. This bill would replace the current fixed rate of 12% per annum, which has not been changed since 1981, with a variable rate that is set at four points above the current Bank of North Dakota prime interest rate. As of Monday, January 10, 2005, the current BND interest rate is 5.25%, so the judgment interest rate as of July 1, 2005, under this bill would be reduced from 12% to 9.25%. This rate would be adjusted every two years based on the interest rate in effect at that time. The bill would not change the interest rate on any existing judgments, except for child support judgments that are generally adjusted from time to time as payments are made and as new arrears become due and unpaid.

Section Ten identifies the proper court in which to pursue penalties for failing to report a newly hired employee when none of the employees has a current child support order.

Section Twelve would address overpayments and disbursements made to families in error. By statute, these disbursements are not a gift and must be repaid. However, there are times when the debt is simply uncollectible, either because the family is not able to pay the money back or because the amount due is too small to be cost-effective to pursue beyond an initial demand letter. Since proposing this section, discussion has continued on ways to address this issue. At this time, the Department requests that Section 12 be removed from the bill.

Section Fourteen proposes to remove the sunset on the current statute allowing the state child support enforcement program to enter into cooperative agreements to be a service provider to the regional child support enforcement units or an Indian tribe. This section was enacted last session as a way to improve the delivery of child support enforcement services through centralization of functions and also to improve the services provided to tribal children. However, no such agreements have been entered up to this point, which we believe is due in part to the fact that the expiration date on the current statute makes it difficult to plan for the long term.

Madame Chairman, this concludes my testimony. I would be happy to answer any questions the committee may have.

PROPOSED AMENDMENTS TO HOUSE BILL 1172

Page 1, line 3, remove "a new section to chapter 50-06.3,"

Page 1, line 15, replace "A" with "Notwithstanding section 13-05-02, a"

Page 6, remove lines 4 through 15

Renumber Accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1172

Page 1, line 3, remove "a new section to chapter 50-06.3,"

Page 1, line 6, remove "section 28-20-34,"

Page 1, line 8, remove "judgment interest,"

Page 1, line 15, replace "A" with "Notwithstanding section 13-05-02, a"

Page 4, remove lines 21 through 31

Page 5, remove lines 1 through 5

Page 6, remove lines 4 through 15

Renumber Accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1172

Page 1, line 3, remove "a new section to chapter 50-06.3,"

Page 1, line 6, remove "section 28-20-34,"

Page 1, line 8, remove "judgment interest,"

Page 1, line 15, replace "A" with "Notwithstanding section 13-05-02, a"

Page 2, remove lines 3 and 4

Page 3, line 24, after "efforts" insert a period and replace "and is appropriated on a continuing basis" with "Any funds retained by the public authority under this subsection must be deposited in the account established under section 50-09-15.1. Notwithstanding section 50-09-15.1, any funds that have been retained and deposited under this subsection may be used by"

Page 3, line 25, remove the first "to"

Page 3, line 26, after the underscored period, insert "Subject to available appropriations, any claim by an obligee for funds that have been retained under this subsection must be paid out of the account established under section 50-09-15.1."

Page 4, remove lines 21 through 31

Page 5, remove lines 1 through 5

Page 6, remove lines 4 through 15

Renumber accordingly

## HOUSE BILL 1172

**SECTION 1.** A new section to chapter 13-05 of the North Dakota Century Code is created and enacted as follows:

**Child support collection agencies.**

1. A collection agency attempting in any manner to collect child support as defined in section 14-09-09.10 must be licensed under this chapter if either the child support debtor or creditor reside within this state.
2. A collection agency licensed under this section may not impose a fee or charge for any child support collected primarily through the efforts of a governmental agency.
3. If the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1, all child support payments collected by a collection agency must be paid to the department of human services within five business days of disbursement under section 14-09-25. Child support payments disbursed under 14-09-25 shall be redirected to a collection agency upon written request of the obligee, and the obligee may revoke the request for redirection of payments at any time.
4. A collection agency failing to direct child support payments to the department of human services as required in this section is liable to the child support debtor for the amount improperly withheld by the collection agency, in addition to any other remedy or damages permitted by law, except in instances of bona fide error. The department of human services is not required to give credit for payments withheld by a collection agency in violation of this section.
5. Any person contracting for services with a collection agency for the collection of child support may cancel the contract without a fee or charge:
  - a. Within 15 days of signing the contract;
  - b. After twelve consecutive months in which the collection agency fails to make a collection; or
  - c. If the government child support agency begins collecting on behalf of the child support creditor, provided such collections are primarily the result of the government agency's efforts.



## **HOUSE BILL No. 1172**

1/11/05

**Testimony by:** Bryan R. Dvirnak, Pres.  
Collection Center Inc.  
Bismarck, North Dakota

Human Services Committee

Dear Chairwoman, Clara Sue Price, Vice-Chairman, Dick Dever and members of the House Human Services Committee. My name is Bryan Dvirnak and I am President of Collection Center Inc. Thank you for allowing me to come before the Human Services Committee this morning.

Collection Center Inc. currently provides collection services to the State of North Dakota's Human Services, including the State's eight Human Service Centers and the State's Child Support Division of the Department of Human Services. As such, I am sensitive to my remarks, the NDDHS and HB1172.

I became aware of HB1172 late yesterday afternoon, and as a result have not had the Opportunity to have our trade association, The North Dakota Collectors Association, nor Our Attorney review the bill. Late Monday evening I had the opportunity to briefly



discuss the bill with the Department of Human Services attorney, Mr. Mike Schmidt and share some of Collection Center Inc.'s concerns with the bill. By the time I had the conversation with Mr. Schmidt last nite, most of my written testimony had already been prepared, which I have provided to you. Some of my written testimony was clarified and concerns put to rest in my telephone conversation with Mr. Schmidt. Some of my concerns remain. I am submitting my testimony to you today to place my questions for clarification and concerns on record.

Mr. Schmidt indicated that the intent of the bill is to primarily address collection agencies located outside the State of North Dakota. Not having the opportunity to discuss the proposed bill with our Trade Association or our legal counsel or research the North Dakota Statutes, we are not in a position, to determine that the bill only would affect collection agencies located outside the State of North Dakota doing business in North Dakota. If it can be shown that HB1172 only affects collection agencies located outside of North Dakota doing business in North Dakota, then our concerns are a mute point. I must also point out that, after reviewing the bill, a number of sections to the bill are not clear and raise questions.

Having said that, Collection Center Inc. raises the following items for clarification and concerns on HB1172:

**I. Clarifications required:**

Section 1 Sub-paragraph 2a, 2b, & 2C

2a is not clear & does not delineate on accounts that have been placed with the collection agency for servicing, but alludes to the collection agency not being able "to impose a fee or charge" if child support money was "collected *primarily through the efforts of a governmental agency*". Once an account is placed with the collection agency for servicing, the collection agency has put time, effort and expense into the collection of the account and should be entitled to its contingency fee. What is meant by "*primarily through the efforts of a governmental agency*"?

2b is not clear and addresses the collection agency not being able to "impose a fee or charge for collection of a current child support payment". What is meant by "current child support payment"? Again, if an account was placed with a collection agency, they should be entitled to their contingency fee-but just on the account that was placed for servicing.

2c needs clarification on *current child support*.

## II      **Opposition:**

Section 1 Sub-paragraph 2d	Restriction on contingency fee to 25%.
Sub-paragraph 3	Require 5 day remittance to DHS
Sub-paragraph 4	Penalty for failure to remit to DHS of 3 times the amount due or \$500 whichever is larger.
<u>Section 6</u>	Waive judgment interest on arrearages as part of an amnesty program.
<u>Section 8</u>	Changing of interest rate on judgments.

**Section 1 Sub-paragraph 2d.** Collection Center Inc.'s current contract with the

Department of Human Services, including the Child Support Division is a contingency fee based contract and may violate HB1172.

Collection Center Inc.'s contract with the NDDHS differentiates between *Regular Collection Accounts* (those not requiring legal action) and *Legal Collection Accounts* (those accounts where the debtor refuses to pay but it has been determined through a due diligence process that he/she has the ability to pay but legal action is required). The contingency for Legal Collection Accounts is always higher and is used as an "offset" to allow the collection agency to recover a portion of the legal fees it incurs in pursuing accounts legally.

Secondly, outside of Collection Center Inc.'s contract with the NDDHS, restricting the contingency fee to 25.0% suppresses the market place. Let the market place dictate price & terms and not let the government determine price and terms.

**Section 3.** Most collection agencies remit once or twice monthly. The Requirement to remit five days after receiving payment could conceivably require the collection agency to remit every day, assuming the received payments daily. My recommendation is for the committee to consider requiring remittance bi-monthly or preferably, monthly.

**Section 4.** It would be helpful to understand the justification and rationale for a penalty. All collection agencies are required to place funds collected into a trust

account and to remit payment to the client. Collection agencies are required to be bonded and annually licensed by the North Dakota Department of Financial Institutions.

**Section 6.** Waiving of judgment interest is not fair to the judgment creditor.

Interest charged on judgments is away for the judgment creditor to help offset some of the costs associated with obtaining the judgment. Allowing the NDDHS to waive the judgment interest is not fair to the judgment creditor. Not all costs associated with obtaining the judgment can be recovered from the debtor.

In the collection industry, usually the collection agency typically fronts all of the expenses associated with obtaining a judgment, the interest and higher fees associated with Legal Collection Accounts, helps offset a portion of collection agencies costs associated with bringing legal action.

**Section 8.** Of all the sections to HB1172, section 8 is the one that is most troublesome and probably has greatest negative impact to any judgment creditor. The proposed change from the current 12.0% fixed interest rate to a variable at BND plus 4.0% variable annually *will serve only to encourage delinquent debtor accounts to not pay their bill!* Currently North Dakota Statutes allows 12.0% on a judgment, which encourages the debtor to seek alternative financing at cheaper interest rates.

If the delinquent judgment debtor can obtain cheaper financing from a bank, who by the way is in the business of renting money, it is an incentive for the judgment

debtor to pay the debt they legally incurred. *Why encourage the judgment debtor to not pay his/her debt by giving them cheap financing via allowing the judgment creditor to carry the debt?* By reducing the interest rate, the judgment debtor has one less incentive to not pay their legally incurred debt obligation. HB1172 would reduce the judgment interest rate, and the judgment creditor, be it a rancher; farmer; hospital; clinic; financial institution; small business owner; or attorney or collection agency collecting on behalf of their client is the one being hurt. Why should the judgment creditor, who gets up every day and goes to work, be further damaged financially, because the debtor, who has refused to pay his/her bill, now has a cheaper source of financing?

I respectfully submit to the members of this committee that there needs to be some protections afforded the judgment creditor who has already been harmed by the judgment debtor. I would encourage you to consider leaving the interest rate at its current rate of 12.0%. It is a reasonable interest rate under any circumstances, encourages the judgment debtor to pay his/her bill, and yet protects the judgment creditor who is the one who has been truly damaged. 12.0% was an attractive rate in the 1980's & 1990's and still is today.

Kreidt, Gary L.

From: Fleming, James C.  
Sent: Tuesday, January 18, 2005 2:28 PM  
To: Porter, Todd K.  
Cc: Kreidt, Gary L.; Kaldor, Lee A.  
Subject: Re: FW: House Bill 1172



ND HB1172 -  
tion 1- Propos

Rep. Porter and members of the subcommittee:

In general response, as we suspected and expressed to the committee, a key component of Mr. Rosenkoetter's amendments would be to REQUIRE the SDU to redirect payments of current child support to the collection agency rather than to the custodian of the children for their current needs. If the custodial parent has to choose between feeding the children or paying the rent and paying the collection agency, we believe that choice is obvious and should not be pre-empted because the law required the SDU to send the current child support payments to the agency.

On the question of whether the child support collection agencies are required to be licensed, I have discussed Mr. Rosenkoetter's legal theory with the attorney for the Department of Financial Institutions (DFI). There may be an argument that Mr. Rosenkoetter is technically correct, but DFI, which promulgated the rule he is relying on, is not sold. In any event, I was advised by DFI's attorney that DFI was already considering amending the "consumer debt" limitation in its current rule after the legislative session. I understand Mr. Rosenkoetter's interpretation of the current rule will make that amendment even more likely, regardless of what happens with HB 1172. The current rule was drafted to exclude commercial debts at an arm's length between businesses; the intent of protecting individual debtors from unfair debt collection practices applies equally whether the debt arises out of a child support judgment or consumer transaction.

I suspect Mr. Rosenkoetter knows his amendments would not "address everyone's concerns" because it would mandate that the SDU redirect payments of current support to the collection agency rather than to the children who need that support in full. His latest response openly admits that the reason for the redirect provision is so the collection agency gets paid for collecting current support.

I'm sure we'll discuss this more today, but here are the points we would make in response:

The fee cap is removed from the bill under the amendments we provided to the subcommittee, allowing the collection agency to set whatever percentage it needs to from collections of unassigned arrears to cover its expenses and make money.

The bill does not tell parents they cannot hire a collection agency, even for the collection of current support; it simply says that a fee cannot be deducted from the children's money for current support to pay for it.

The bill does not prevent a collection agency for getting paid for the work it has done as of the date the contract is terminated; it only prohibits a fee or charge for terminating a contract.

James C. Fleming  
Deputy Director/General Counsel  
State Child Support Office  
701-328-3582  
sojfle@state.nd.us

"Porter, Todd K."  
<tkporter@state.nd.us>, "Kaldor,  
James C."

01/17/2005 01:09  
PM

To: "Kreidt, Gary L."  
Lee A." <lakaldor@state.nd.us>, "Fleming,  
<sojfile@state.nd.us>  
cc:  
Subject: FW: House Bill 1172

fyi

From: Eric Rosenkoetter [mailto:eric.rosenkoetter@supportkids.com]  
Sent: Monday, January 17, 2005 8:01 AM  
To: Porter, Todd K.  
Subject: RE: House Bill 1172  
Importance: High

Representative Porter:

No, we are not licensed in North Dakota ? but for good reason.

Your licensing statute, like the federal Fair Debt Collection Practices Act ("FDCPA"), does not apply to the collection of child support. Federal courts have declared that child support does not arise from a consumer transaction and is therefore not a "debt" as defined in the FDCPA.

Likewise, the North Dakota act requires entities to be licensed if they are involved in debt collection which is the "collection of claims owed or due or alleged to be owed or due a creditor by a consumer." "Claim" in your statutes is defined as any obligation or alleged obligation out of a consumer transaction." Please see Section 13-04-02-01. Your staff attorney can confirm that this is accurate, and as a starting point I would recommend they look at the following: Mabe v. GC Servs. Ltd. Partnership, 32 F3d 86 (4th Cir. 1994); Campbell v. Baldwin, 90 F. Supp. 2d 754 (ED Tex. 2000); Battye v. Child Support Servs., Inc., 873 F. Supp. 103, 105 (ND Ill.1994).

HOWEVER, BECOMING LICENSED IS NOT AN ISSUE. We have no objection to this bill requiring private child support collectors to be licensed if the custodial parent or non-custodial parent reside in North Dakota.

Supportkids is licensed in eleven other states which have broadened their collection practices acts to include child support, and we have no objection if North Dakota does likewise.

What I have a problem with is:

- An arbitrary fee cap which is so low nobody will be able to offer services in your state;
- Telling parents they can't hire us to collect current support, if that is what they want us to do ? particularly when the state child support agency is unable to help them collect;
- Allowing clients to terminate their contract at will ? thus avoiding paying fees after services, which often cost us thousands of dollars, have been rendered.

Those are the provisions I have problems with. I have attached an amendment which I believe will address everyone's concerns and I will be very pleased to discuss it with you at your convenience.

Thanks for your time and consideration,

Eric Rosenkoetter

Supportkids, Inc.  
(512) 437-6133

-----Original Message-----

From: Porter, Todd K. [mailto:tkporter@state.nd.us]  
Sent: Friday, January 14, 2005 12:07 PM  
To: Eric Rosenkoetter  
Subject: RE: House Bill 1172

Mr. Rosenkoetter:

Are you currently licensed to collect in North Dakota?

Thank you,

Todd

From: Eric Rosenkoetter [mailto:eric.rosenkoetter@supportkids.com]  
Sent: Friday, January 14, 2005 9:53 AM  
To: tkporter@state.nd.us  
Subject: House Bill 1172  
Dear Representative Porter:

I would very much like to speak with you about HB1172, which I understand has been assigned to your subcommittee.

This bill contains anti-business provisions which will completely eliminate the option of hiring a private agency to collect child support in North Dakota, which is an important option for parents when the state's child support program's efforts falter.

Mike Schwindt, your IV-D director, should be aware that the Federal Office of Child Support Enforcement has issued policy strongly encouraging state programs to cooperate with private agencies. Indeed, even the Federal Office of Child Support Enforcement's National Strategic Plan states that it is necessary for state IV-D programs to "collaborate with the private bar and private collection agencies to respond to parents' choices about how to enforce their orders."

This bill, in Section 1, does the complete opposite of these policies by, in effect, completely eliminating private agencies.

We have seen legislation similar to this on occasion ? most recently with California's SB339, which was vetoed by Governor Schwarzenegger. However, in all honesty, our industry has never seen a bill like this come out of a committee in a state in which Republicans hold the majority.

I will be on a plane most of the day today and won't get back to Austin until this evening. I am hopeful, though, you and I can discuss this topic very soon. I will be available on my cell phone all weekend, and also next week at my office.

Sincerely,

Eric Rosenkoetter  
General Counsel for Intergovernmental Affairs  
Supportkids, Inc.  
(512) 437-6133 (office)  
(512) 914-5696 (cell) (See attached file: ND HB1172 - Section 1-  
Proposed 01-12-05.doc)



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BOWMAN

SOUTHWEST JUDICIAL DISTRICT

Darcy Carroll,

Plaintiff,

-vs-

Supportkids, Inc., a/k/a

Supportkids,

Defendant.

MEMORANDUM

Case No. 02C-37

In this case, there is pending the defendant, Supportkids, Inc.'s, motion to dismiss and plaintiff, Darcy Carroll's, motion for discovery. Supportkids seeks a dismissal of Carroll's complaint for lack of jurisdiction, or in the alternative for inconvenient forum. Carroll resists. The Court denies both motions.

Supportkids is a private child support enforcement company incorporated in Texas. Supportkids maintains a Website, an 800 number, and advertises in the national media. Supportkids does not have any agents or representatives physically located in North Dakota.

Initially, Carroll contacted Supportkids through an 800 telephone number. According to Supportkids records, this was made on February 5, 1999, and she requested an informational packet, which would have included a contract for services. After mailing the packet to her, Supportkids followed up with phone calls and other mailings in early 1999. She did not sign the contract and

there was no further contacts for almost a year. Then, Supportkids contacted Carroll on March 29, 2000. At that time, she informed Supportkids she was working with her governmental agency. On October 17, 2000, Carroll requested Supportkids to re-send an application to her. On November 29, 2000, she returned the signed contract and was accepted as a new case by Supportkids on December 18, 2000.

All times material to this action, Carroll has resided in Bowman County, North Dakota. The Court order that created the child support obligation was entered in Shelby County, Memphis, Tennessee, and Carroll's former husband is not a North Dakota resident.

North Dakota may exercise personal jurisdiction over a corporation who acts directly or by an agent as to any claim for relief arising from the corporation having such contact within the state that the exercise of personal jurisdiction would not offend traditional notions of justice, or fair play, or due process of law under the circumstances set out in N.D.R.Civ.P. 4 which are:

- (A) transacting any business in this state;
- (B) contracting to support or supplying service, goods, or other things in this state;
- (C) committing a tort within or without this state causing injury to another person or property within this state;
- (D) committing a tort within this state, causing injury to another person or property within or without this state;
- (E) owning, having any interest in, using, or possessing property in this state;
- (F) contracting to insure another person, property, or other risk within this state;

(G) acting as a director, manager, trustee, or officer of a corporation organized under the laws of, or having its principal place of business within, this state;  
(H) enjoying any other legal status or capacity within this state; or  
(I) engaging in any other activity, including cohabitation or sexual intercourse, within this state.

In support of its motion, Supportkids relies on *Lumber Mart, Inc. v. Haas Intern. Sales & Serv.*, 269 N.W.2d 83 (N.D. 1978), and *Hust v. Northern Log, Inc.*, 297 N.W.2d 429 (N.D. 1980).

N.D.R.Civ.P.4 is intended to encompass the exercise of personal jurisdiction to the fullest extent permitted by due process, but each case must be decided on its own facts and circumstances. In making the determination, the Court must resolve two questions: It must determine if the requirement of N.D.R.Civ.P. Rule 4(b)(2) has been satisfied, and it must determine whether the non-resident party has had such contacts with North Dakota that the exercise of personal jurisdiction does not offend against the traditional notions of justice and fair play under the concept of due process. Hust at p. 441.

In Hust, the Court found no jurisdiction because Northern Log did not solicit business in North Dakota through sales persons or through advertising reasonably calculated to reach the state, and Northern Log did not directly serve the North Dakota market. Northern Log's activities were not those of a corporation purposefully availing itself of the privilege of conducting activities within North Dakota. Hust at p. 433.

In *Lumber Mart, Inc.*, the Ross Brothers alleged faulty repairs

took place in Circle, Montana, and Ross Brothers' only contact with North Dakota was in trying to settle the dispute and its unrelated use of North Dakota highways by its separate trucking business. But in *Auction Effertz, Ltd. v. Schecher*, 2000 ND 109; 611 N.W.2d 173, contact by telephone or other electronic medium was sufficient to give the North Dakota Court personal jurisdiction.

Although Supportkids did not physically have an office in North Dakota, it advertised in the national media, it maintained a Website advertising the availability of its services nationwide, it maintained 800 numbers for ease of nationwide access, and its contract provides: "Although Supportkids enforces child support orders nationwide, it is a Texas corporation. Therefore, this agreement is entered into in Travis County, Texas, and shall be interpreted according to the laws of the State of Texas." [Emphasis added.] In addition, Supportkids utilizes the services of the North Dakota Child Support Enforcement Agency in collecting its fees and carrying out its services. Thus, Supportkids purports to offer its services to North Dakota residents.

The Court concludes that exercising personal jurisdiction over Supportkids does not offend traditional notions of justice and fair play, nor violate due process of law. The Court recognizes it is to give the phrase "transacting any business in this state" an expansive interpretation; thus, it concludes Supportkids is transacting business in North Dakota, and they have contracted to supply services in this state. N.D.R.Civ.P. 4(b)(2) and Auction

Effertz, Ltd.

Supportkids amended its motion to include a request to dismiss on the grounds of inconvenient forum. N.D.R.Civ.P. (4)(b)(5).

For the purpose of forum non conveniens, it is assumed the Court has jurisdiction. The question is whether the Court should decline jurisdiction because another forum would be more convenient. Although the implementation of the doctrine rests within the discretion of the Court, it is considered a drastic remedy to be exercised with caution and restraint. 28 AmJur 2<sup>d</sup> Courts § 131.

In making the determination, the Court may consider the amenability of the parties to personal jurisdiction in another venue, the party and witness convenience, conflict of law, and any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial. Commonwealth Land Title Insurance Company v. Pugh, 555 N.W.2d 567, 579 (N.D. 1996).

Carroll is a North Dakota resident. Supportkids is a Texas corporation offering services nationwide. The party and witness convenience is a mixed question. Both parties are amenable to personal jurisdiction in North Dakota, but it is not clear Carroll would be in Texas. At this time, it would place a great burden on Carroll to proceed with the action in Texas. Since Supportkids offers its services nationwide, it should expect to appear in the local courts. It is not clear at this time which law would apply. If Carroll is seeking rescission, it may be North Dakota. Because

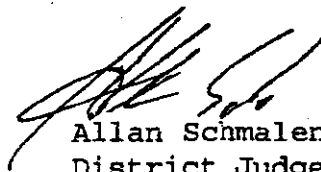
of possible inconvenience, the Court expects Carroll to cooperate and accommodate Supportkids with reference to any of its witnesses. The use of video depositions has proven effective in the past. At this time, Bowman County does not appear to be an inconvenient forum. Therefore, the defendant's motion to dismiss is denied.

In reviewing the motion to compel discovery, most of the issues relate to the motion to dismiss. Thus, those requests are no longer relevant. Therefore, the motion to compel discovery is denied.

Counsel for Carroll shall prepare a proposed order consistent with this memorandum for the Court's review. A copy of the proposed order shall be sent to opposing counsel. Opposing counsel shall have 10 days after receipt to review it and submit any comments.

Dated: December 6, 2002.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Allan Schmalenberger', is written over the printed name.

Allan Schmalenberger  
District Judge



# North Dakota Collectors Association

an association of collection specialists

## House Human Services Committee

January 11, 2005

Testimony of Kim Rau

On behalf of the North Dakota Collector's Association

In Opposition to House Bill 1172

Madam Chair Clara Sue Price and House Human Services Committee members, my name is Kim Rau and I am representing the North Dakota Collector's Association (NDCA) today in opposition to portions of HB 1172.

NDCA is in opposition to HB 1172 because there are many sections in this proposed law change that need further clarification and other changes that are of great concern to NDCA's members.

Section 1 of HB 1172 deals with child support collection agencies and has several provisions that are of concern.

First, the provision at lines 21-23 on page 1, under subsection 2(a) of the new section are of concern regarding the fee. Once an account is turned over to a collection agency, the agency works the account diligently to recover the money for the client. Subsection 2(a) states that the agency cannot impose a fee if the collection occurred due to the efforts of a governmental agency. This may be hard to prove who actually recovered debt. This issue should be covered in the contract between the client and the collection agency rather than made part of the statute.

Next, at page 2 on lines 3-4, subsection 2(d) discusses the fee that can be charged on the collection of the debt. This is another area that should be negotiated in the contract vs. law.

Also, at page 2 at lines 13-18, section 4 discusses the penalties for failure of the collection agency to remit the payment to the Department of Human Services. Under ND law, collection agencies are required to have a trust account to be used for client's monies. Collection agencies are already required to have a bond in place. The penalties suggested in this bill are extreme and unnecessary.

Finally, at page 4 there is a change proposed to Section 28-20-34 NDCC regarding interest rates on judgments. NDCA strongly opposes the proposed changes from the current interest rate of 12% per annum to a rate of 4% above the Bank of North Dakota prime interest rate per annum, which as of December 2004 was reported at 5.25%. This change would affect every money judgment obtained in ND. It affects much more than just past due child support. One of the main reasons to charge interest is to increase the incentive to pay off a debt as fast as possible. In the case of child support, the goal should be to get the money to the custodial parent as fast as possible. Reducing the interest rate will not accomplish this goal. In addition, the bookkeeping on keeping track of the post judgment interest rate would be daunting. A fixed rate of interest leaves no doubt and is consistent. The interest rate of 12% should remain as it has been for many years. It has worked successfully as a deterrent to debtors who refuse to pay their accounts.

\* NEW CSN KIT has to be filled in.



## Child Support Network, Inc.

a private child support enforcement agency

P.O. Box 40380, Phoenix, Arizona 85067-0040  
212 E. Gilbert Road, Suite 212, Phoenix, Arizona 85012  
Phone (602) 928-0310

OFFICE OF CLERK/RECORDER  
PEMBINA CO., ND

I hereby certify that the within instrument  
was filed for record in this office on

JUL 20 2004

at \_\_\_\_\_ o'clock \_\_\_\_\_ m and was duly  
recorded in Bk \_\_\_\_\_ of \_\_\_\_\_ Pg \_\_\_\_\_

County Clerk/Recorder  
Deputy

### AGREEMENT TO COLLECT CHILD SUPPORT

This Agreement is between \_\_\_\_\_  
Print your name (the name you want us to use when we send you a check)

and Child Support Network, Inc. ("CSN"). You agree that CSN will be your exclusive agent to collect  
child support from the non-custodial parent (NCP):

(Please print the name of person who owes you support)

Last

First

Middle

**Contract Collection Amount:** Your child support will be calculated by CSN and you will be advised of the  
"Contract Collection Amount" (total amount due to you and being collected under this Agreement).

The term "Contract Collection Amount", includes all child support, alimony, spousal support, and  
medical support collected. It also includes any other kind of support included in your court order and  
interest, fees and costs.

There can be no payment of current support, while there is any balance remaining on your "Contract  
Collection Amount". This is true no matter what the payment is called by the NCP, Judge, Court Clerk,  
State Disbursement Unit, or any other agency.

**Termination of Agreement:** This Agreement is valid until the Contract Collection Amount has been  
collected in full. If twelve (12) consecutive months go by with no payment being made by the NCP you  
may terminate this Agreement by notifying CSN, in writing, that you want to close your case.

**What Child Support Network Agrees To Do:** CSN agrees to do the following:

1. CSN will use its best efforts to collect the "Contract Collection Amount".
2. CSN will not settle your case for any principal amount less than the total principal amount owed to  
you. CSN may agree to accept a periodic payment or payments of the principal amount owed to you.  
CSN may settle for less than the full amount of interest, or may waive interest in order to reach a  
settlement.
3. CSN will send you status reports updating information as we believe it is necessary, usually every 90  
days. A payment sent to you is considered a status report.

**What You Agree To Do:** As your part of this Agreement, you agree to do the following:

1. You agree to notify CSN of any changes, modifications or legal actions regarding your support order  
or changes in child custody, and send copies of any modification to CSN.

(Page 1 of 4)

FORM NO. 0039E  
REVISED 12-1-02

Copyright 1995-2002 Child Support Network

(Attachment A)

JUL 28 2004 04:23PM P1

FAX NO. : 7012654876

FROM : PEMBINA CO

JUL 28 2004 04:24PM P2

FAX NO. : 7012654876

FROM : PEMBINA CO



**Miscellaneous:** You and CSN agree to the following additional terms:

1. You agree that CSN is not giving or attempting to give legal advice. You are encouraged to contact an attorney at any time that you feel you may need legal advice.
2. CSN will have complete discretion to determine the methods and procedures used in collecting your child support.
3. This Agreement will be effective when you and an authorized representative of CSN sign it.
4. This Agreement is an agreement to provide collection services only. Under no circumstances shall this Agreement be considered to be or operate as an assignment of any support order to CSN.
5. This Agreement does not require that CSN take action on matters involving custody, visitation or other matters unrelated to the collection of past due support.

**Entire Agreement:** This Agreement contains the entire agreement between you and CSN. No other representations or agreements shall be of any force and effect unless in writing.

**Default:** If you receive payments directly from the NCP, the court or from any other source, and fail to remit the fees due to CSN you will be in default of this agreement. If you do anything that would in any way adversely affect the ability of CSN to collect your past due support, you will be in default of this Agreement.

If you are in default of this Agreement or if you fail to refund any overpayment made to you by CSN, or if you are in violation of any of the other terms of this Agreement, you grant permission for CSN to obtain your consumer credit report from any consumer-reporting agency.

**Governing Law/Attorney Fees:** This Agreement shall be interpreted according to the laws of the State of Arizona. In the event of litigation, the prevailing party will be entitled to reasonable attorney fees and court costs.

**Limited Power Of Attorney:**

I hereby appoint Child Support Network, Inc. as my lawful attorney-in-fact to take the following actions:

1. CSN is authorized to collect my child support, spousal support, medical support, educational support, interest, fees and costs due under the terms of my court order or divorce decree. CSN is authorized to settle the amounts due and make payment arrangements.
2. CSN is authorized to collect, demand, receive, accept and deposit any check, draft, note or money which Child Support Network receives on my behalf.
3. CSN is authorized to obtain information from any third party which may be used in collecting my past due support.
4. CSN is authorized to file liens against real and personal property and to receive payments on my behalf that result from the filing of such liens.
5. CSN is authorized to file claims in Estate and Bankruptcy cases on my behalf.
6. I specifically authorize and approve the release of any and all information to CSN by any state, county or other governmental agency.

(Page 3 of 4)

FORM NO. 003RE  
REVISED 12-1-02

Copyright 1995-2002 Child Support Network

**THIS IS A POWER OF ATTORNEY COUPLED WITH AN INTEREST. IT IS NOT REVOCABLE EXCEPT BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES.**

**IMPORTANT NOTICES**

**The CSN contract anticipates that the non-custodial parent may attempt to avoid CSN's collection efforts by making payments directly to you or through the court or state or county child support enforcement office. CSN will have earned its fees on any money paid after the date this Agreement is signed by you.**

**Payments made directly to you include payments made through the court system or paid by or through any other means.**

**There can be no payment of current support, while there is any balance remaining on your "Contract Collection Amount". This is true no matter what the payment is called by the NCP, Judge, Court Clerk, State Disbursement Unit, or any other agency.**

**Your Signature**

**Child Support Network, Inc.**

**Print Your Name**

**By:**

**Representative**

**Your Social Security Number**

**Date Signed by CSN:**

**Date Signed by You:**

**Texas Residents Only:**

**Direct your inquiries to the Texas Department of Banking.**

**Complaints must be in writing.**

**Texas Department of Banking**

**2601 N. Lamar, Austin, TX 78706**

**877-276-5854 (toll free)**

**[www.banking.state.tx.us](http://www.banking.state.tx.us)**

**(Page 4 of 4)**

**FORM NO. 003RE  
REVISED 12-1-02**

**Copyright 1995-2002 Child Support Network**



**Child Support Network, Inc.**  
a private child support enforcement agency

DE: \_\_\_\_\_

DATE: \_\_\_\_\_

INITIAL: \_\_\_\_\_

### Suit Authorization

This document serves as Suit Authorization as described in the Agreement to Collect Child Support between you and Child Support Network, Inc. ("CSN").

What You Agree To Do: As your part, you agree to:

1. Retain an attorney (the "Attorney") for the purpose of enforcing your court-ordered child support. The Attorney's fees and costs will be advanced by CSN. You will be responsible for reimbursement of the costs (including filing fees, service fees and court reporter's fees for depositions, hearings and trials) to CSN from the first moneys collected on your case.
2. You agree to furnish the Attorney with any documents and information requested by the Attorney in order to proceed with your case;
3. You give CSN express permission to disclose to the Attorney and his employees, information from your CSN file deemed necessary by CSN or the Attorney to help collect for you;
4. You give the Attorney express permission to discuss any and all part of your collection case with CSN, its officers and employees;
5. You agree that CSN's fee will increase to forty five percent (45%) of the amounts collected. In addition, you will reimburse CSN costs CSN has advanced on your behalf from the first moneys collected on your case. The term of your Agreement to Collect Child Support is extended indefinitely or until we have collected the entire principal and interest balance due on your case.
6. You agree to advise CSN of any payments made directly to you by the non-paying parent or any state, county or other government agency and immediately send CSN its fee for such direct payments;
7. You agree that CSN is your exclusive agency and that you will not use any state agency, other collection agency, collector or attorney to collect your child support for the term of this Agreement.

What Child Support Network Agrees To Do: CSN agrees to do the following:

1. Use its best efforts to help you locate and select the Attorney;
2. Advance fees and costs to the Attorney on your behalf. The decision to advance such fees and costs shall be at the sole discretion of CSN. You will not incur any personal liability for Attorney's fees and costs. However, CSN will reimburse itself for any such fees and costs out of the first moneys collected on your case. This obligation is in addition to your obligation to pay CSN's collection fees set forth in the original Agreement to Collect Child Support.

**Miscellaneous:** Neither CSN nor the Attorney has made any representation, warranty or promise regarding the outcome of your case or that any specific legal remedies will be pursued. The legal remedies to be pursued will be determined at the discretion of the Attorney, giving due consideration to information received from both you and CSN.

**Prior Agreement:** In all other regards, the Agreement to Collect Child Support remains open, outstanding and in full force and effect.

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Print Your Name

Date: \_\_\_\_\_

Child Support Network, Inc.

By: \_\_\_\_\_

Authorized Representative

Date: \_\_\_\_\_

SA1-0212

**PO Box 40320, Phoenix AZ 85007-0320 or  
212 E. Osborn, Suite 210, Phoenix, Arizona 85012  
Phone (800)-388-0500 Fax (602) 241-1818**

# Fact Sheet 1172

## Child Support Enforcement

**Child Support Enforcement** is a joint state, county, and federal partnership. The purpose of the program is to secure financial support from legally responsible parents so that families and children receive that support, and so that the demand on public treasuries is reduced.

### **The Child Support Enforcement Division works with two types of cases:**

- 4D° **IV-D cases** which stem from referrals from public assistance programs (TANF, foster care and Medical Assistance) or from either custodial or noncustodial parents applying for IV-D services.
- 4D° **NonIV-D cases** which stem from court orders where there is no application or referral to the IV-D program or where people choose to close their IV-D case.

### **Services Provided:**

**By the eight Regional Child Support Enforcement Units** (county entities) through cooperative agreement:

- ° **IV-D cases:** Paternity establishment; establishment and enforcement (including issuing income withholding orders) of child support and medical support orders, review and adjustment of court orders, local locate when customers need to be found, and customer services.
- ° **NonIV-D cases:** None.

### **By the Clerks of Court:**

- ° **IV-D and NonIV-D cases:** Initiate contempt proceedings, enter civil file information into the automated system, and customer services.

### **By the Child Support Enforcement Division:**

- ° **IV-D Cases:** Manage a number of programs including Federal and State Tax Intercept, State Parent Locate Service, Credit Bureau Reporting, Financial Institution Data Match, Passport Denial, State Directory of New Hires, Central Registry, and Federal Case Registry. Also provide customer services and centralized receipting and distribution of payments including Electronic Funds Transfer (EFT).
- ° **NonIV-D cases:** Centralized receipting and distribution of payments, issuing income withholding orders, customer services, and EFT.

### **The court order:**

- ° Is issued by the district court. District court judges or judicial referees may conduct hearings.
- ° Establishes medical support and the amount of child support due based upon the child support guidelines and the unique fact situations of each case.
- ° May be amended at the request of either party either through private legal counsel or pro se (self representation).
- ° Will be reviewed, on IV-D cases, by RCSEUs, generally no more frequently than 35 months since the order was entered or last reviewed.
- ° Is enforced by the courts. Requests for enforcement may come from Clerks of Court, private attorneys, either party or, in IV-D cases, the RCSEUs.
- ° Is also enforced, in IV-D cases, by the Child Support Enforcement Division and the RCSEUs through a variety of administrative actions.
- ° Is also enforced, in nonIV-D cases, by the Child Support Enforcement Division through administratively issued income withholding orders.

### **Contacts/Information:**

Web site: <http://www.childsupportnd.com>

#### **Customers:**

##### **Customer Service Unit:**

Email: [socscs@state.nd.us](mailto:socscs@state.nd.us)

Ph: 800.231.4255 Local: 328.5440 Fax: 701.328.5425

##### **Customer Address Changes:**

Email: [sosdu@state.nd.us](mailto:sosdu@state.nd.us)

Web site: <http://www.childsupportnd.com>

(select Child Support On-Line Services)

#### **Employers:**

##### **New Hire Reporting:**

Email: [sohire@state.nd.us](mailto:sohire@state.nd.us)

Web site: <http://www.childsupportnd.com>

(select Child Support On-Line Services)

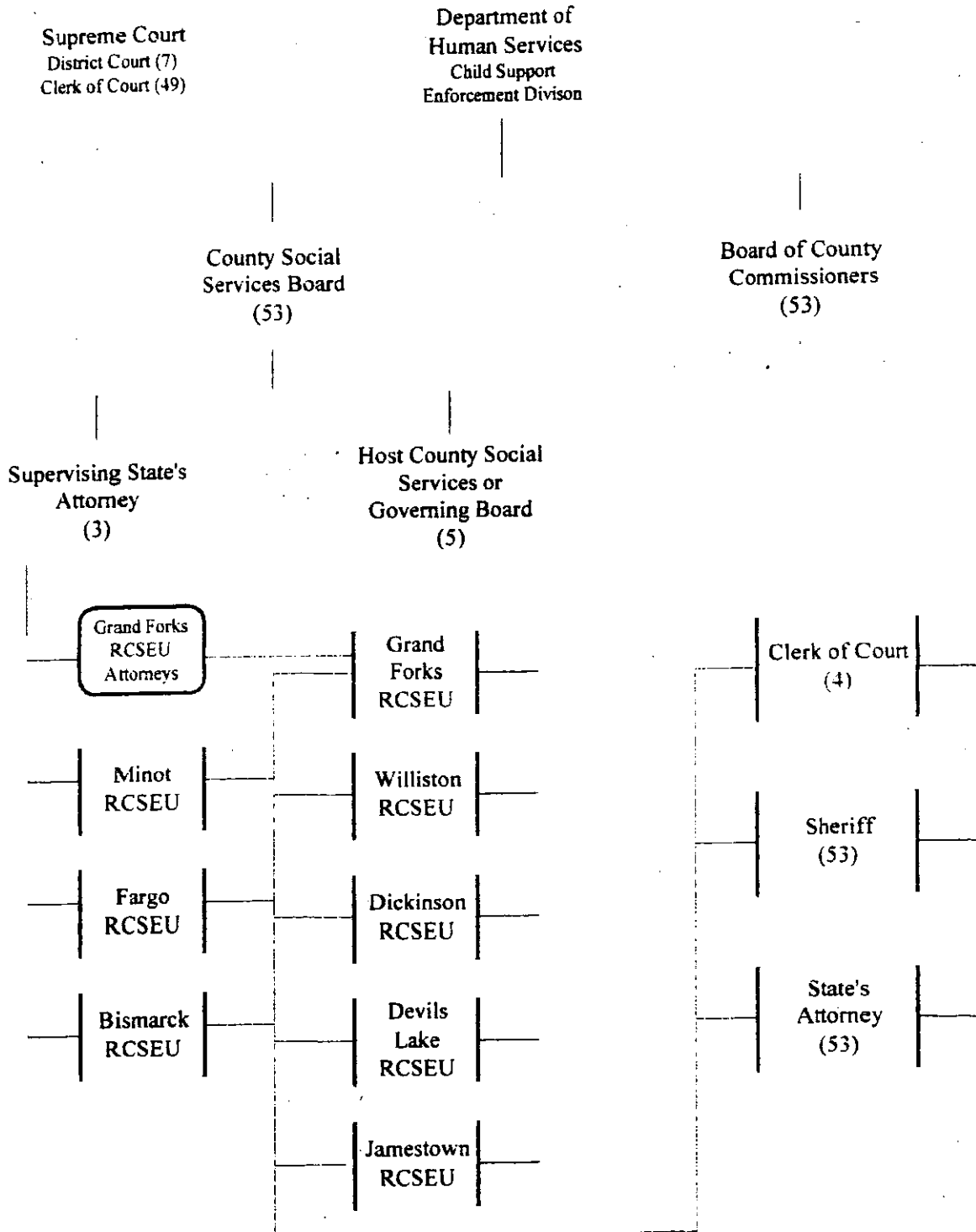
Fax: 701.328.5497

##### **Mike Schwindt, Director:**

Email: [soschm@state.nd.us](mailto:soschm@state.nd.us) Ph: 701.328.3582

Revised February 2003 for the North Dakota Department of Human Services, Child Support Enforcement Division, P.O. Box 7190, Bismarck ND 58507-7190, (701) 328-3582, toll free ND: (800) 755-8530, TTY: (800) 366-6889

**Child Support Enforcement  
SERVICE DELIVERY SYSTEM  
January 2004**



RCSEU: Regional Child Support Enforcement Unit

## **DUTIES – Child Support Enforcement**

**January 2004**

### **State Office, DHS**

The following services are provided on IV-D cases only unless otherwise specified.

Submit State Plan materials which meet federal compliance standards

Provide financial and statistical information to the federal government

Develop and issue policies, procedures, and instructions, as well as training

Operate the State Disbursement Unit (SDU) which receipts and distributes all (IV-D and NonIV-D) payments

Manage the following programs:

- Federal and State Tax Offset
- Credit Bureau Reporting
- Financial Institution Data Match (FIDM)
- State Directory of New Hires (SDNH)
- Passport Denial

Develop, operate, and maintain the certified statewide computer system (FACSES)

Operate the State Parent Locate Service (SPLS) which provides statewide/national locate services

Manage the Central Registry of incoming interstate cases

Perform program self-assessment

Manage the Federal Case Registry (FCR)

Issue, amend, and terminate income withholding orders on NonIV-D cases

Provide customer service (IV-D and NonIV-D cases)

### **Regional Child Support Enforcement Units**

The following services are provided on IV-D cases only.

Provide local locate services

Pursue establishment of paternity

Pursue establishment of child support and medical support orders

Enforce child support and medical support orders

- Income withholding
- Federal and state tax offset
- Credit bureau reporting
- License and vehicle registration suspension
- Passport denial
- Liens on real and personal property
- Executions on real and personal property
- Refer for state or criminal prosecution
- National Medical Support Notice

Review and pursue adjustments of support orders

Provide customer service

### **Court**

The following services are provided on NonIV-D and IV-D cases.

#### **District Court:**

Issue orders to establish paternity

Issue orders to establish support

Preside over contempt proceedings

- Set conditions for purging contempt
- Order incarceration
- Revoke license
- Require work activities

#### **Clerk of Court:**

Enter and maintain court order information on FACSES

Initiate contempt proceedings

Provide customer service

## Flow Chart of Activities

### IV-D Case

January 2004

#### Referral or Application for Services

- Custodial or noncustodial parent completes application, or
- Through County Social Service Board, family applies for assistance (TANF or Medicaid) or child enters Foster Care, and a referral is made.

**Policy direction and automated system support provided for all services**

State Office, DHS

Case opened. Necessary services provided by Regional  
Child Support Enforcement Units:

#### Locate

- Local level
- Referred to State Office, DHS, for State Parent Locator Services (SPLS)

#### Paternity Establishment

- Voluntary Paternity Acknowledgment (VPA)
- Genetic testing
- Stipulation or motion to court if no VPA

#### Establishment (child support and medical support)

- Gather financial information and calculate guideline amount
- Stipulation or motion to court

#### Review and Adjustment

- Gather financial information and calculate guideline amount
- Stipulation or motion to court

#### Enforcement

- Income withholding
- State and federal tax offset (State Office, DHS, submits cases)
- Credit bureau reporting (State Office, DHS, submits cases)
- License and vehicle registration suspension
- Passport denial (State Office, DHS, submits cases)
- Liens and executions
- Refer for state or criminal prosecution
- National Medical Support Notice

#### Issue orders

#### Preside over contempt proceedings

- Set conditions for purging contempt
  - Order incarceration
  - Revoke license
  - Require work activities
- District Court

#### - Enter and maintain order information on FACES

#### - Initiate contempt proceedings

Clerk of Court

Payment

All support payments must be made to the State Disbursement Unit (SDU).  
**Payment received, entered onto FACES, and distributed within two days. (Checks are generated overnight and mailed the following day.)**  
State Office, DHS

Payment  
to  
family

# Flow Chart of Activities

NonIV-D Case

January 2004

**Court order established from a divorce or support action taken by a custodial parent not receiving IV-D services.**

District Court

**Information from court order entered onto FACSES.**

Clerk of Court

**If noncustodial parent's employer is known, an income withholding order is issued.**

State Office, DHS

**No payment**

**Clerk of Court is alerted, by FACSES, that a payment is missed.**

State Office, DHS

**Order to Show Cause is issued for noncustodial parent to appear at a contempt hearing to explain why payments are not being made. Contempt hearing scheduled.**

Clerk of Court

**Payment**

**All support payments must be made to the State Disbursement Unit (SDU).**

**Payment received, entered onto FACSES, and distributed within two days. (Checks are generated overnight and mailed the following day.)**

State Office, DHS

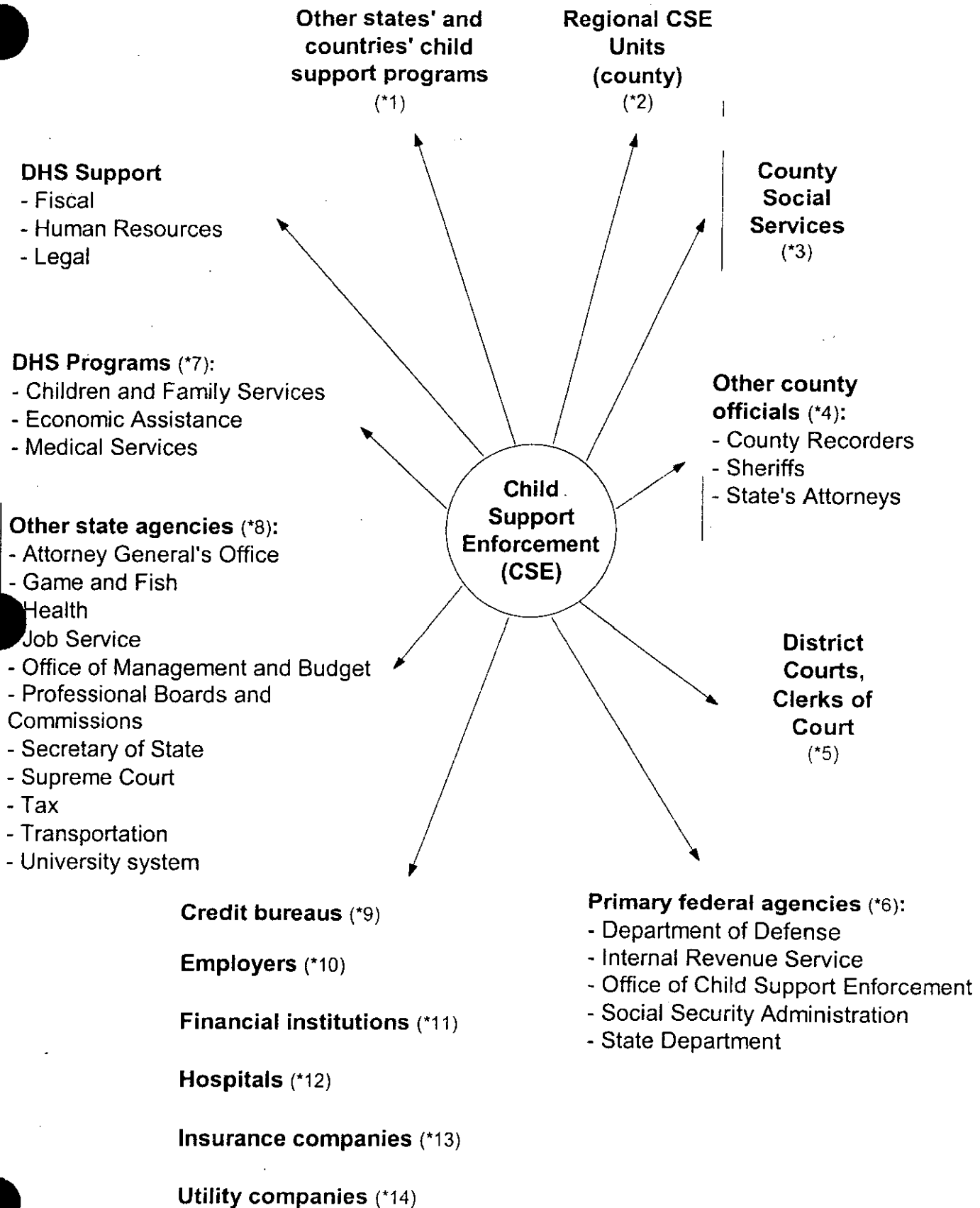
**Payment to family**

**At the contempt hearing, set conditions for purging contempt, order incarceration, revoke license, require work activities.**

District Court



# **Child Support Enforcement** **Primary Interdependencies and Interactions**



\* See attached for more detailed information on the primary interdependencies.

**Number/Entity****Primary Interdependencies and Interactions**

1.  
Other states' and  
countries' child  
support programs

- CSE sends outgoing interstate cases to other states and countries for appropriate services. (Usually when noncustodial parent resides in another state and we are not able to take appropriate action without another state's assistance.)
- CSE receives incoming interstate cases from other states and countries for appropriate services. (Usually when noncustodial parent resides in North Dakota and the other state is not able to take appropriate action without our assistance.)

2.  
Regional CSE  
Units  
(county)

- Eight county-administered offices which provide child support enforcement services, pursuant to a cooperative agreement between CSE and County Social Service Boards.
- Provide local locate services.
- Pursue establishment of paternity.
- Pursue establishment of child support and medical support orders.
- Enforce support orders.
- Review and pursue adjustments of support orders.
- Provide customer service.

3.  
County Social  
Services

- Administer Regional CSE Units (directly, in Dickinson, Williston, Devils Lake, Grand Forks, and Jamestown).
- TANF, Medicaid, and Foster Care cases are worked by the eligibility staff.

4.  
Other county  
officials

**County Recorders**

- CSE accesses real property information.
- CSE files liens on personal property with County Recorders.

**Sheriffs**

- Serve papers relating to establishment and enforcement legal processes.
- Handle forced sales of assets to collect child support.
- Take individuals into custody on contempt of court orders for jail time.

**State's Attorneys**

- Upon agreement with the County Social Service Board, the host county State's Attorney supervises the Regional CSE Unit in Bismarck, Fargo, and Minot (and the attorneys in Grand Forks).
- Pursue contempt of court proceedings and prosecute for state criminal nonsupport.

5.  
District Courts  
Clerks of Court

**District Courts**

- Issue orders to establish paternity and support.
- Preside over contempt proceedings.

**Clerks of Court**

- Enter and maintain court order information on FACSES.
- Initiate contempt proceedings.
- Provide customer service.

**Number/Entity**

6.

Primary federal  
agencies

**Primary Interdependencies and Interactions**

**Department of Defense**

- CSE accesses DOD information.
- CSE issues income withholding orders through Defense Financing and Accounting Service (DFAS); DFAS withholds and sends money to the SDU.

**Internal Revenue Service**

- CSE accesses federal tax records.
- Offset federal tax refunds to pay past-due child support.

**Office of Child Support Enforcement**

- The federal agency responsible for the administration of the Child Support Enforcement program.
- Responsible for developing federal policy; oversight; conducting audits of state programs; and providing technical assistance and training to the state programs.

**Social Security Administration**

- Verify information for CSE.
- CSE issues income withholding orders to SSA for withholding from certain benefits; SSA withholds and sends money to the SDU.

**State Department**

- Deny passports when there is past-due child support.

7.

DHS Programs

**Children and Family Services**

- CSE receives referrals from the Foster Care program. (Each time a child goes into a Foster Care setting, a referral is sent to CSE.)
- Upon receipt of a referral, CSE provides all appropriate services on the case.
- CSE exchanges information with the Foster Care program on the cases in common.

**Economic Assistance**

- CSE receives referrals from the TANF program. (When a family becomes eligible for TANF and certain "deprivation" reasons exist (e.g., a parent is absent from the home), a referral is sent to CSE.)
- Upon receipt of a referral, CSE provides all appropriate services on the case.
- CSE exchanges information with the TANF program on the cases in common.

**Medical Services**

- CSE receives referrals from the Medicaid program. (When a family becomes eligible for Medicaid and certain "deprivation" reasons exist (e.g., a parent is absent from the home), a referral is sent to CSE.)
- Upon receipt of a referral, CSE provides all appropriate services on the case.
- CSE exchanges information with the Medicaid program on the cases in common.

**Number/Entity**

8.

Other state  
agencies

**Primary Interdependencies and Interactions**

**Attorney General's Office**

- The Lottery Division offsets certain winnings to pay past-due child support.

**Game and Fish**

- CSE accesses Game and Fish records.
- CSE issues recreational license suspension and reinstatement orders to Game and Fish; Game and Fish suspends and reinstates the licenses.

**Health**

- CSE accesses information from the Vital Records Division including birth certificates, death certificates, and, most commonly, Voluntary Paternity Acknowledgments (VPAs).
- Vital Records Division is a VPA service entity; they provide the full range of VPA services.
- Vital Records files, certifies, and vacates VPAs.

**Job Service**

- CSE accesses records (e.g., quarterly wage information).
- CSE issues income withholding orders for unemployment benefits; JSND withholds and sends money to the SDU.

**Office of Management and Budget**

- CSE issues income withholding orders to OMB for employee wages; OMB withholds and sends money to the SDU.

**Professional Boards and Commissions**

- CSE accesses information from professional boards and commissions.
- CSE issues professional and occupational license suspension and reinstatement orders to professional boards and commissions; professional boards and commissions suspend and reinstate the licenses.

**Secretary of State**

- CSE accesses the Secretary of State's business database.
- CSE accesses the Secretary of State's Central Index System.
- CSE files liens on certain personal property with the Secretary of State.

**Supreme Court**

- State's appellate court with the responsibility of hearing appeals from decisions of the district courts.
- Responsible for administration of the court system including clerk of court contract with CSE.

**Tax**

- CSE accesses tax records.
- Offset state tax refunds to pay past-due child support.

**Number/Entity**  
(Other state  
agencies,  
cont.)

**Primary Interdependencies and Interactions**

**Transportation**

- CSE accesses driver's license information.
- CSE accesses motor vehicle registration information.
- CSE issues driver's license and vehicle registration suspension and reinstatement orders to DOT; DOT suspends and reinstates the licenses and registrations.
- CSE files vehicle liens with DOT; DOT places liens on the vehicles.

**University system**

- CSE issues income withholding orders to the University system for employee wages; the University system withholds and sends money to the SDU.

9.  
Credit bureaus  
10.  
Employers

- CSE accesses credit bureau information.
- CSE reports unpaid child support to credit bureaus.
- CSE accesses information from all private businesses and government entities on employees and former employees.
- CSE issues income withholding orders to employers; employers withhold and send money to the SDU.
- CSE issues National Medical Support Notices (NMSNs) to employers; employers enroll the children in available health insurance.

- Employers report new hires to CSE within 20 days of date of hire.

- Employers report lump sum payments to CSE.

- CSE accesses financial institution records.

11.  
Financial  
institutions

- CSE issues liens and executions on financial accounts; financial institutions freeze the accounts, or seize the money and send to the SDU.

12.  
Hospitals

- Birthing hospitals are the primary VPA service entity. Provide the full range of VPA services in the hospital, at the time of the child's birth.

13.  
Insurance  
companies

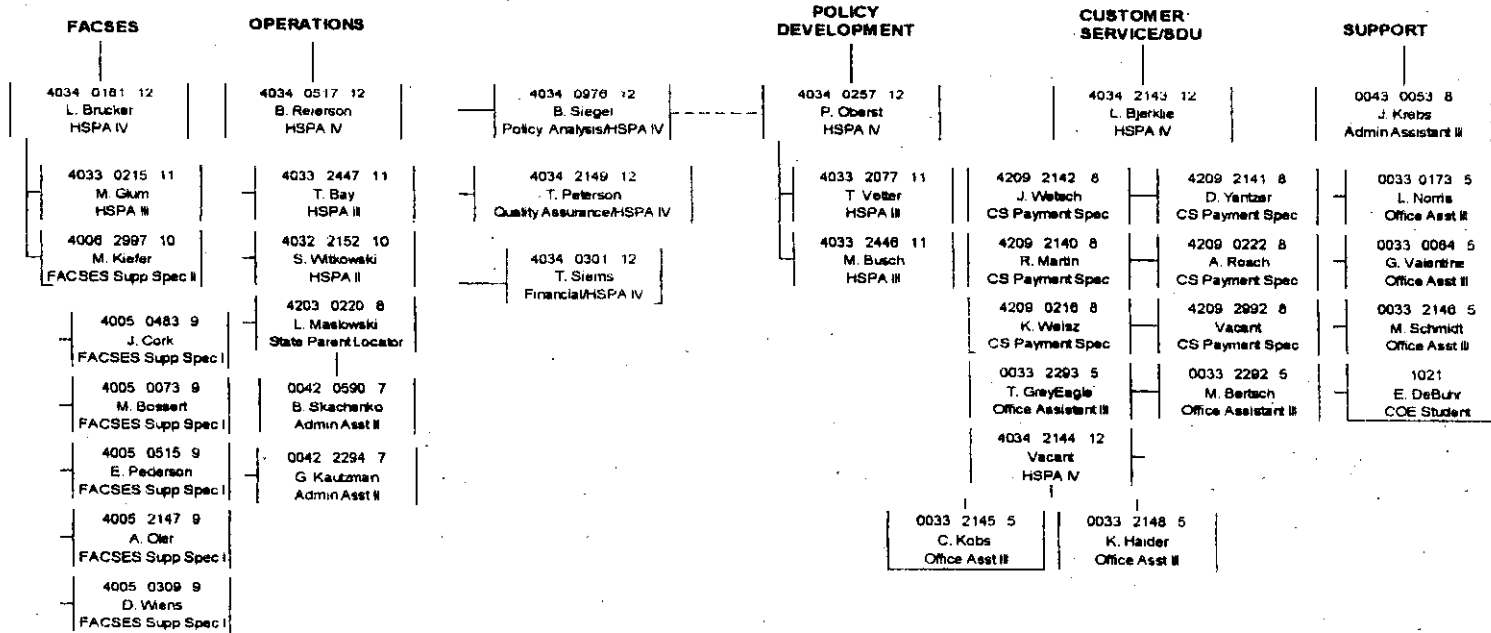
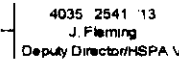
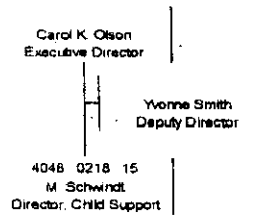
- Coming soon. Child Support Lien Network (CSLN) which will provide matches with insurance proceeds. (Once identified, CSE will then be able to seize the proceeds, as appropriate.)

14.  
Utility companies

- CSE accesses customer account information.

# North Dakota Department of Human Services

## Child Support Division



December 2004

## Child Support Enforcement Program

The Child Support Enforcement program understands that you may have issues or questions concerning visitation with your child. While the program does not provide services relating to the establishment or enforcement of visitation, we hope that this fact sheet will provide you with helpful information.

**The enforcement of child support and the enforcement of visitation are separate issues.** Child support and visitation are both considered to be rights of the child. Because a child is denied one right does not mean that the child should be denied another right. This means that it is not okay for a custodial parent to deny visitation because the noncustodial parent does not pay child support. It also means that it is not okay for a noncustodial parent to not pay child support because the custodial parent denies visitation.

**If you wish to pursue a visitation issue in court, you have the option of either hiring an attorney to represent you or representing yourself.** If you need assistance with a visitation issue, you may wish to hire an attorney. If you believe you cannot afford to hire an attorney, you may be able to get legal help at a reduced cost. For more information on the options available, contact the State Bar Association of North Dakota (SBAND) or visit their Web site at [www.sband.org](http://www.sband.org) (under "Resources for the Public").

You may also wish to represent yourself (that is, without an attorney's help). Self-Represented Visitation Forms are available on the ND Supreme Court Web site at [www.court.state.nd.us/court/forms/Visitation/forms.htm](http://www.court.state.nd.us/court/forms/Visitation/forms.htm). These forms and instructions are to be used only if there is already a court order giving you or the other parent visitation rights. You may also contact the Customer Service Unit for copies of the forms. (See contact information at the end of this sheet.)

**You may be awarded reasonable attorney's fees and costs.** State law at N.D.C.C. § 14-09-24 provides that, in a court proceeding in which there is a dispute over visitation, the court shall award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent.

**Visitation may be enforced by the court through child support enforcement remedies.** N.D.C.C. § 14-09-24 provides that the court may use any remedy to enforce a visitation order that is available to enforce a child support order, as long as the remedy is appropriate for visitation enforcement.

**There are a number of rights and duties that may be included in the court order.** State law at N.D.C.C. § 14-09-28 provides that each parent of a child has a number of visitation (and custody) rights and duties. Rights include the right to access various records of the child; the right to attend school conferences; and the right to reasonable access to the child by letter, telephone, and electronic means. Duties include the duty to inform the other parent if the child has a serious accident or serious illness; the duty to immediately inform the other parent of a change in home telephone number and address; and the duty to keep the other parent informed of the name and address of the school the child attends. With some exceptions, these rights and duties are to be included in a visitation order.

Over→

When a child support order is being established or modified, the amount of child support may be adjusted to consider extended visitation. State law at N.D.C.C. § 14-09-09.7(1)(e) requires that the Child Support Guidelines (the administrative rules used to calculate the amount of child support to be ordered) include consideration of extended periods of time a minor child spends with the noncustodial parent.

The guidelines address this by allowing an adjustment for extended visitation. For this purpose, extended visitation means there is a court order providing for visitation between the noncustodial parent and a child which exceeds 60 of 90 consecutive nights or an annual total of 164 nights. (N.D. Admin. Code N.D.C.C. § 75-02-04.1-08.1 of the North Dakota Child Support Guidelines.\*) A guidelines form (Schedule D – Adjustment for Extended Visitation\*) may be used to calculate the adjustment.

Three official interpretations\* regarding this section of the guidelines have been issued to address frequently asked questions:

- IC-CO-00-07 Extended Visitation – Applicability Determined by Visitation Schedule in Court Order
- IC-CO-00-09 Split Custody and Extended Visitation – Extended Visitation Adjustment to be Completed Prior to Split Custody Calculation
- IC-CO-01-13 Adjustment for Extended Visitation - Number of Visitation Nights to be Counted in the Calculation

\* Copies of the Child Support Enforcement Guidelines, guidelines forms, and guidelines interpretations are available through the Child Support Enforcement Web site at <http://www.childsupportnd.com>. You may also request them by contacting the Customer Service Unit. (See contact information at the end of this sheet.)

When a child support order is being established or modified, the amount of child support may be adjusted to consider visitation-related travel expenses. The guidelines also allow for a reduction of the child support amount due to a noncustodial parent's travel costs directly related to the purpose of visiting the child. The reduction must be in the best interest of the child and consideration must be given to the amount of court-ordered visitation and, when such history is available, actual expenses and practices of the parents. (N.D. Admin. Code § 75-02-04.1-09(2)(i) of the North Dakota Child Support Guidelines.)

### **Contact Information:**

#### **Web site**

<http://www.childsupportnd.com>

#### **Customer Service Unit**

E-mail: [socscs@state.nd.us](mailto:socscs@state.nd.us)

Ph: 800-231-4255

328-5440 (Bismarck/Mandan)

Fax: 701-328-5425

#### **Regional Child Support Enforcement Units**

Bismarck: 701-222-6721

Devils Lake: 701-662-5374

Dickinson: 701-227-7424

Fargo: 701-241-5640

Grand Forks: 701-787-8575

Jamestown: 701-252-7394

Minot: 701-857-7696

Williston: 701-577-4560

#### **Director, Mike Schwindt**

E-mail: [soschm@state.nd.us](mailto:soschm@state.nd.us)

Ph: 701-328-3582

#### **N.D. Dept. of Human Services Child Support Enforcement Division**

1600 E Century Avenue, Suite 7

P.O. Box 7190

Bismarck ND 58507-7190

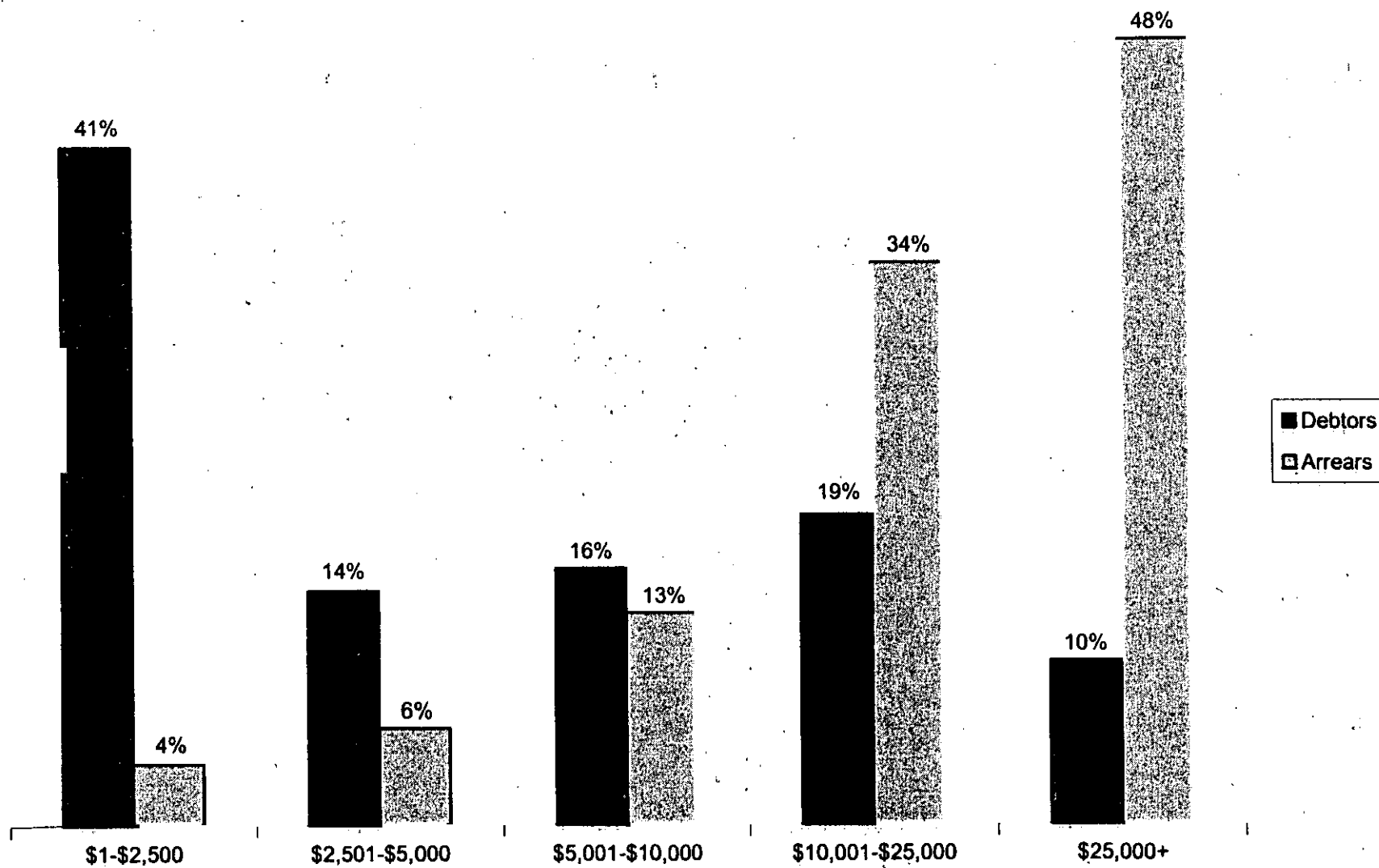
701-328-3582 or 800-231-4255

TTY 800-366-6888

<http://www.childsupportnd.com>



# Distribution of Debtors and Arrears by Amount of Arrears Owed - December 2004



Child Support  
Receivables  
SFY 2000 to 2004

	2000	Change	2001	Change	2002	Change	2003	Change	2004 Principal	2004 P & I	Change from 2000			
IV-D											Principal Amount	Percent	Principal and Interest Amount	Percent
Federal match Foster Care	2,818,181	23.40%	3,475,174	20.68%	4,193,102	11.35%	4,689,043	8.33%	5,058,059	5,151,469	2,241,878	0.80	2,335,288	0.83
State match Foster Care	3,280,097	3.18%	3,384,519	-6.75%	3,158,139	-4.57%	3,011,908	-9.52%	2,725,168	2,742,971	-554,930	-0.17	-537,127	-0.16
Emergency Foster Care	485,914	185.54%	1,387,501	74.80%	2,425,342	28.50%	3,116,656	19.96%	3,738,637	3,837,978	3,252,723	6.69	3,352,084	6.90
Total Foster Care assigned	6,582,192	25.30%	8,247,194	18.52%	9,774,584	10.47%	10,797,605	6.71%	11,521,864	11,732,418	4,939,671	0.75	5,150,225	0.78
TANF assigned	57,258,934	9.08%	62,459,364	7.09%	66,888,032	6.07%	70,946,079	6.22%	75,359,241	78,154,500	18,100,308	0.32	18,895,567	0.33
Medicaid assigned	244,347	-0.10%	244,105	5.35%	257,175	1.08%	259,893	4.20%	270,810	272,019	28,483	0.11	27,872	0.11
Out of State and Other assic	10,930,856	17.59%	12,853,333	8.89%	13,998,381	0.54%	14,072,300	7.27%	15,098,054	15,455,968	4,165,198	0.38	4,525,113	0.41
Total Assigned Receivables	75,018,328	11.71%	83,803,987	8.49%	90,916,172	5.68%	96,077,877	6.42%	102,247,969	103,614,905	27,231,641	0.36	28,598,577	0.38
IV-D not Assigned	62,998,881	3.59%	65,258,646	1.38%	66,156,671	3.39%	66,402,291	2.55%	70,146,807	72,043,921	7,147,926	0.11	9,045,040	0.14
Sub Total IV-D	138,015,210	8.00%	149,062,643	5.37%	157,072,843	4.72%	164,480,168	4.81%	172,394,776	175,658,826	34,379,567	0.25	37,643,617	0.27
NonIV-D (Clerk only)	19,992,760	23.78%	24,746,191	14.09%	28,233,763	-1.26%	27,878,143	8.83%	30,338,519	31,042,840	10,345,759	0.52	11,049,880	0.55
Total Receivables *	158,007,970	10.00%	173,808,833	6.82%	185,306,606	4.51%	193,664,771	6.73%	206,701,487	206,701,487	48,693,497	0.31	48,693,497	0.31
* Total includes interest accrued							1,306,460	203.73%	3,968,171	3,968,171	3,968,171		3,968,171	
Interest collected							157,083	221.57%	505,125.91	505,125.91				
% collected							12.02%	5.87%	12.73%	12.73%				

**Child Support Enforcement  
Abbreviations and Definitions**

**AC** Action Communication

**ACF** Administration for Children and Families

**AEI** (Automated) Administrative Enforcement of Interstate Cases

**AF** Alleged Father

**AFDC** Aid to Families with Dependent Children

**AP** Absent Parent

**AR** Applicant/Recipient

**AT** Action Transmittal

**ATM** Automated Teller Machine

**AVR** Automated Voice Response System

**BIA** Bureau of Indian Affairs

**CCA** Consumer Credit Agencies

**CCD+** Cash Concentration and Disbursement "Plus"

**CCPA** Consumer Credit Protection Act

**CCWIPS** Comprehensive Child Welfare Information and Payment System

**C:D** CONNECT:Direct

**CEJ** Continuing Exclusive Jurisdiction (to modify a support order)

**CI** Central Inquiry

**CP** Custodial Parent

**CSE** Child Support Enforcement

**CSEA** Child Support Enforcement Agency

**CSENet** Child Support Enforcement Network

**CSI** (CSENet) Case Status Inquiry

**CSPIA** Child Support Performance and Incentive Act of 1998

**CSPS** Child Support Payment Specialist

**CSSB** County Social Service Board

**CTX** Corporate Trade Exchange

**DCIA** Debt Collection Improvement Act

**DCL** Dear Colleague Letter

**DDU** Direct Deposit Unit

**DHHS** Department of Health and Human Services

**DHS** Department of Human Services

**DIW** Direct Income Withholding

**DN** Document Number

**DOA** Due on Arrears

**DOB** Date of Birth

**DOD** Department of Defense or Date of Death

**DoIT** Division of Information Technology

**DOS** Department of State

**DOT** Department of Transportation or Department of Treasury

**EDI** Electronic Data Interchange

**EFT** Electronic Funds Transfer

**ESKARI** Earnings Systems Keyed Applications for SSN Registration Identification

**EW** Eligibility Worker

**FACSES** Fully Automated Child Support Enforcement System

**FBI** Federal Bureau of Investigation

**FCR** Federal Case Registry

**FEIN** Federal Employer Identification Number

**FFCCSOA** Full Faith and Credit for Child Support Orders Act

**FI** Financial Institution

**FIDM** Financial Institution Data Match

**FIPS** Federal Information Processing Standards

**FMS** Financial Management Service

**FPLS** Federal Parent Locator Service

**FSA** Family Support Act

**FTI** Federal Tax Intercept

**FVI** Family Violence Indicator

**FYI** For Your Information

**GAL** Guardian Ad Litem

**GT** Genetic Test

**HB** House Bill

**IC** Informational Communication

**IHS** Indian Health Service

**IM** Information Memo or Information Memorandum

**IRC** Internal Revenue Code

**IRS** Internal Revenue Service

**IV-A** Title IV-A of the Social Security Act (also known as Temporary Assistance for Needy Families (TANF))

**IV-D** Title IV-D of the Social Security Act (also known as Child Support Enforcement)

**IV-E** Title IV-E of the Social Security Act (also known as Foster Care and Adoption Assistance)

**IVR** Interactive Voice Response System

**IW** Income Withholding

**IWO** Income Withholding Order

**MAO** Medical Assistance Only

**MOE** Maintenance of Effort

**MSFIDM** Multistate Financial Institution Data Match

**MSO** Monthly Support Obligation

**NACHA** National Automated Clearing House Association

**NCCSD** National Council of Child Support Directors

**NCCUSL** National Conference of Commissioners on Uniform State Laws

**NCP** Noncustodial Parent

**NCSEA** National Child Support Enforcement Association

**NCSL** National Council of State Legislatures

**NDM** Network Data Mover

**NDNH** National Directory of New Hires

**NH** New Hire

**NLETS** National Law Enforcement Telecommunications System

**NMSN** National Medical Support Notice  
**NPRC** National Personnel Records Center  
**OBRA** Omnibus Budget Reconciliation Act  
**OCSE** Office of Child Support Enforcement  
**OEA** Office of Economic Assistance  
**OPM** Office of Personnel Management  
**OSC** Order to Show Cause  
**OTSC** Order To Show Cause  
**OVM** Office Vision/MVS  
**PF** Putative Father  
**PIQ** Policy Interpretation Question  
**POS** Point-of-Sale  
**PPD** Prearranged Payment or Deposit  
**PRWORA** Personal Responsibility and Work Opportunity Reconciliation Act of 1996  
**QMCSO** Qualified Medical Child Support Order  
**QW** Quarterly Wage  
**RCSEU** Regional Child Support Enforcement Unit  
**RMR** Requires Manual Review  
**RURESA** Revised Uniform Reciprocal Enforcement of Support Act  
**SB** Senate Bill  
**SCR** State Case Registry  
**SDNH** State Directory of New Hires  
**SDU** State Disbursement Unit  
**SEIN** State Employer Identification Number  
**SESA** State Employment Security Agency  
**SFN** State Form Number  
**SPLS** State Parent Locator Service  
**SSA** Social Security Administration  
**SSN** Social Security Number

**STI** State Tax Intercept

**Stip** Stipulation

**SWAP** (see Definitions)

**TANF** Temporary Assistance for Needy Families

**TAT** Three Affiliated Tribes

**TDD** Telecommunications Device for the Deaf

**TECS** Technical Eligibility Computer System

**TPL** Third Party Liability

**TPQY** Third Party Query

**TPR** Termination of Parental Rights

**TTY** Text Telephones

**UI** Unemployment Insurance

**UIFSA** Uniform Interstate Family Support Act

**UPA** Unreimbursed Public Assistance or Uniform Parentage Act

**URES** Uniform Reciprocal Enforcement of Support Act

**VA** Department of Veterans Affairs

**VIN** Vehicle Identification Number

**VIPRS** Very Intelligent Payment Receipting System

**VPA** Voluntary Paternity Acknowledgment

**Absent Parent (AP)** (See noncustodial parent (NCP) and obligor – the preferred terms)

**Action Communication (AC)** Document issued by the State IV-D office as needed. The primary recipients of Action Communications are, with very few exceptions, the Regional IV-D offices. Action Communications issue policy directions (policies, procedures, and forms), usually requiring action by the Regional IV-D offices. Manual revisions are issued through ACs.

**Action Transmittal (AT)** Document issued by the federal Office of Child Support Enforcement (OCSE) as needed, which instructs state IV-D programs on the actions they must take to comply with new and amended federal requirements. Has basis in federal law or regulation.

**Adjudication** The determination of the issues in an action by the entry of a judgment, decree, or order by a judge (or, in some other states, by another decision-maker such as a master or hearing officer) based on the evidence submitted by the parties.

**Administration for Children and Families (ACF)** The agency in the federal Department of Health and Human Services (DHHS) that houses the Office of Child Support Enforcement (OCSE).

**Administrative Enforcement of Interstate Cases (AEI)** Provision in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) giving state IV-D programs the ability to provide high-volume automated administrative enforcement services without establishing a full interstate IV-D case. AEI allows states to locate, place a lien on, and seize financial assets of delinquent noncustodial parents across state lines. Also sometimes referred to as Automated Administrative Enforcement of Interstate cases.

**Administrative Procedure or Process** Method by which support orders are made and enforced by an executive agency rather than by courts and judges.

**Aid to Families with Dependent Children (AFDC)** Former entitlement program that made public assistance payments on behalf of children who did not have the financial support of one or both of their parents by reason of death, disability, or continued absence from the home. AFDC was replaced with Temporary Assistance for Needy Families (TANF) under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).

**Alimony** (See Spousal Support – the preferred term)

**Alleged Father (AF)** The person alleged to be the father of the child but who has not yet been legally declared to be the legal father. Also may be referred to as a putative father (PF).

**Applicant/Recipient (AR)** An outdated term used to refer to the person receiving IV-D services through IV-D application (applicant) or through referral due to receipt of public assistance (recipient). (See Custodial Parent – the preferred term)

**Arrearage** Past-due, unpaid child support owed by the noncustodial parent. Also may be referred to as arrears.

**Arrears** Past-due, unpaid child support owed by the noncustodial parent. Also may be referred to as an arrearage.

**Assignment of Support Rights** The legal procedure by which a person receiving public assistance agrees to turn over to the state any right to child support, including arrearages, paid or owed by the noncustodial parent in exchange for receipt of a cash assistance and other benefits. States can then use a portion of said child support to defray or recoup the public assistance expenditure.

**Automated Voice Response System (AVR)** Telephone system that makes frequently requested information available to customers over touch-tone telephones. Also sometimes referred to as Interactive Voice Response System (IVR).

**Burden of Proof** The duty of a party to produce the greater weight of evidence on a point at issue.



**Case Initiation** First step in the child support enforcement process.

**Case Law** Law established by the history of judicial decisions in cases. Generally refers to the decisions of appellate courts.

**Cash Concentration and Disbursement "Plus" (CCD+)** Standardized format used for Electronic Funds Transfer (EFT) of child support withholdings from an employee's wages or from one state to another. The "Plus" indicates that an addenda record carries the payment-related information.

**Central Inquiry (CI) Process** A process used for policy-related inquiries from the Regional IV-D offices to the State IV-D office. The goal is to ensure policy clarification, interpretation, and guidance are provided to Regional IV-D offices in a timely manner that is beneficial to the Regional IV-D offices and to the State IV-D office. The process ensures inquiries are recorded, assigned, tracked, responded to, and disseminated.

**Central Registry** A centralized unit, maintained by every state IV-D program, that is responsible for receiving, distributing, and, at times, responding to inquiries on incoming interstate IV-D cases.

**Child Support** Financial support required to be paid by a noncustodial parent to help support a child. Child support may be ordered in any situation in which the child and both of the child's parents do not reside together. The term "child support" is sometimes used interchangeably with the more generic term of "support" which includes medical support as well as spousal support when spousal support provisions are ordered along with child support.

**Child Support Enforcement Network (CSENet)** State-to-state telecommunications network, which transfers detailed information between state automated child support enforcement systems.

**Child Support Guidelines** A standard method for setting child support obligations based on the income of the parent or parents and other factors determined by states. The Family Support Act (FSA) of 1988 required states to use guidelines to determine the amount of support. It required that there be a rebuttable presumption that the amount which would result from the application of the guidelines is the correct amount and that the presumption could only be rebutted by a finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the state's criteria. North Dakota's guidelines are found in Administrative Rules and are based on the obligor model which means that only the noncustodial parent's income is considered.

**Child Support Pass-Through** Provision by which a certain amount of money from a child support payment collected on behalf of a public assistance recipient is disbursed directly to the custodial parent. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) eliminated the \$50.00 pass-through effective October 1, 1996. A few states have elected to retain the pass-through, paying it out of state, rather than federal, money. North Dakota did not retain a pass-through. Also sometimes called a Child Support "Disregard."

**Child Support Performance and Incentive Act of 1998 (CSPIA)** Federal legislation which provided relief from penalty for states' failures to meet automated system certification requirements; changed IV-D program incentives; and removed impediments to medical support enforcement by, in part, mandating the National Medical Support Notice (NMSN).

**Clerk of Court Only Case** (See NonIV-D case)

**Complainant** Person who seeks to initiate court proceedings against another person. In a civil case the complainant is the plaintiff; in a criminal case the complainant is the state.

**Complaint** The formal written document filed in a court whereby the complainant sets forth the names of the parties, the allegations, and the request for relief sought. Sometimes called the initial pleading or petition.

**Concurrent Jurisdiction** Jurisdiction exercised simultaneously by more than one court or administrative agency over the same subject matter and within the same territory, with the litigant having the right to choose the court in which to file the action.

**CONNECT:Direct (C:D)** Computer network maintained by the Social Security Administration that moves large volumes of data from state agencies, the National Directory of New Hires (NDNH), and the Federal Case Registry (FCR). Formally called the Network Data Mover (NDM).

**Consumer Credit Agency (CCA)** Private agency that assembles and evaluates consumer credit information for the purpose of furnishing consumer reports to third parties. A state IV-D program reports delinquencies to the agencies and also uses the agencies' information for locate purposes. Also sometimes referred to as a credit bureau.

**Consumer Credit Protection Act (CCPA)** Federal law that limits the amount that may be withheld from earnings to satisfy child support obligations. States are allowed to set their own limits provided they do not exceed the federal limits. Regardless of the number of withholding orders that have been served, the maximum that may be withheld for child support is:

<i>Without arrearage -</i>	50% with a second family
	60% single
<i>With arrearage -</i>	55% with a second family and 12+ weeks in arrears
	65% single and 12+ weeks in arrears

In North Dakota, the maximum that may be withheld for child support is 50% of disposable income regardless of other factors.

**Continuing Exclusive Jurisdiction (CEJ)** The doctrine that only one support order should be effective and enforceable between the same parties at any one time and that when a particular court has acquired jurisdiction to determine child support and custody, it retains authority to amend and modify its orders. This **Court of Continuing Exclusive Jurisdiction (CCEJ)** continues to have jurisdiction over a support issue until another court takes it away. The provisions of CEJ are set forth in the Uniform Interstate Family Support Act (UIFSA).

**Controlling Order** The child support order to be enforced prospectively. The Uniform Interstate Family Support Act (UIFSA) provides a priority scheme to identify the controlling order.

**Cooperation** As a condition of Temporary Assistance for Needy Families (TANF) eligibility, the recipient is required to cooperate with the state IV-D program in identifying and locating the alleged father or noncustodial parent; establishing paternity; and establishing and enforcing child support. As a condition of Medicaid eligibility, with some exceptions, the recipient is required to cooperate with the state IV-D program in identifying and locating the alleged father or noncustodial parent; establishing paternity; and establishing and enforcing medical support.

**Corporate Trade Exchange (CTX)** Standardized format used for electronic funds transfer (EFT) of child support withholdings from employees' wages. This method is preferable when processing large volumes of transactions and PRWORA requires states' automated child support enforcement systems to be capable of using this format as well as the CCD+ format.

**Court Order** A legally binding edict issued by a court of law. Issued by a judge (or, in some other states, by another decision-maker such as a master or hearing officer). A court order related to child support often dictates how much is to be paid, how often it is to be paid, and how long it is to be paid.

**Custodial Parent (CP)** The person, generally a parent, who has primary care, custody, and control of the child or, if a court has made a custody determination, the person who has legal custody of the child. (See also Oblige)

**Dear Colleague Letter (DCL)** Document issued by the federal Office of Child Support Enforcement (OCSE) to state IV-D directors as needed, which provides information about practices, changes in procedures, or other child support enforcement topics.

**Debit Card** A card onto which support payments are loaded electronically in the same manner as a direct deposit. The card can be used by the custodial parent to withdraw cash at an Automated Teller Machine (ATM) or at a point-of-sale (POS) machine for goods, services, or cash.

**Decree** The judicial decision of a litigated action, usually in "equitable" cases such as divorce (as opposed to cases in law in which judgments are entered). In practice, however, the terms "decree" and "judgment" are often used interchangeably.

**Default** The failure of a defendant to file an answer or appear in a civil case within the prescribed time after having been properly served with a summons and complaint.

**Defendant** The person against whom a civil or criminal proceeding is begun.

**Department of Health and Human Services** The federal government's principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves. There are twelve agencies within the Department including the Administration for Children and Families (ACF) that houses the Office of Child Support Enforcement (OCSE).

**Direct Deposit** A process involving the electronic funds transfer of support payments from the State Disbursement Unit (SDU) into the custodial parent's bank account. This is done only upon the request of the custodial parent. For purposes of the process in North Dakota, the term "bank" includes banks, credit unions, and savings and loan associations. Support payments may be deposited into either a checking or a savings account.

**Direct Deposit Unit (DDU)** The unit within the State IV-D office that handles direct deposit requests.

**Direct Income Withholding (DIW)** A procedure, whereby an income withholding order can be sent directly to the noncustodial parent's employer in another state, without the need to use the IV-D program or court system in the noncustodial parent's state. The provisions of direct income withholding are set forth in the Uniform Interstate Family Support Act (UIFSA).

**Disbursement** The paying out of collected child support funds.

**Disposable Income** The portion of an employee's earnings that remains after deductions required by law (e.g., taxes). Used to determine the amount of an employee's pay subject to a garnishment, an attachment, or an income withholding order.

**Disposition** The court's decision of what should be done about a dispute that has been brought to its attention. For example, the disposition may be that child support is ordered or an obligation is modified. On the other hand, the disposition may be that the action is dismissed.

**Distribution** The allocation of child support collected to the various types of debt, as specified in federal regulations.

**Earnings Systems Keyed Applications for SSN Registration Identification (ESKARI)** A process within the Federal Case Registry (FCR) which uses certain demographic data (referred to as "ESKARI data") to identify a social security number (SSN).

**Electronic Data Interchange (EDI)** Process by which information regarding an Electronic Funds Transfer (EFT) transaction is transmitted electronically along with the EFT.

**Electronic Funds Transfer (EFT)** Process by which money is transmitted electronically from one bank account to another.

**Enforcement** The application of remedies to secure compliance with a child or medical support obligation contained in a child or spousal support order. Examples of remedies include income withholding; Consumer Credit Agency reporting; federal tax refund offset; liens on, and executions of, assets; license suspension, and passport denial.

**Establishment** The process of adjudicating paternity or obtaining a court order (or in some states, an administrative order) for a child support obligation.

**Execution** The legal process of enforcing a docketed money judgment by seizing and, if applicable, selling the noncustodial parent's real or personal property. In North Dakota, writs of execution for past-due support may be issued either judicially or administratively.

**External Locate Request** Request sent to the Federal Parent Locator Service (FPLS) by the State Parent Locator Service (SPLS) for locate information from sources other than, or external to, the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR).

**External Locate Source** Source for locate information from other than, or external to, the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR). These sources include the Social Security Administration (SSA), Internal Revenue Service (IRS), Department of Veterans Affairs (VA), Department of Defense (DOD), and Federal Bureau of Investigation (FBI).

**Family Support Act (FSA)** Federal law passed in 1988, with three major mandates: (1) Immediate Wage [Income] Withholding, requiring that income withholding must be implemented unless the court finds that there is good cause not to require such withholding, or there is a written agreement between both parties which provides for an alternative arrangement; (2) Review and Adjustment, requiring the periodic review of child support orders; and (3) Guidelines for Child Support Award Amounts, requiring the use of guidelines to determine the amount of support for each family, unless the guidelines are rebutted by a written finding that applying the guidelines would be inappropriate to the case.

**Family Violence Indicator (FVI)** A designation that resides in the Federal Case Registry (FCR) placed on a participant in a case or order by a state that indicates there is reason to believe that release of information may result in physical or emotional harm to an individual. It is used to prevent disclosure of the location of a custodial parent, alleged father, noncustodial parent, or a child believed by the state to be at risk of family violence.

**Federal Case Registry (FCR)** A national database of information on individuals in all IV-D cases, and all nonIV-D orders established or modified on or after October 1, 1998. The FCR receives this case information on a daily basis from the State Case Registry (SCR) located in every state. The federal Office of Child Support Enforcement (OCSE) maintains the FCR as part of the expanded Federal Parent Locator Service (FPLS).

**Federal Employer Identification Number (FEIN)** Unique nine-digit number assigned to all employers by the Internal Revenue Service (IRS), which must be used in numerous transactions, including submitting data and responding to requests relevant to child support.

**Federal Information Processing Standards (FIPS) Code** A unique code that identifies the child support jurisdiction (i.e., states, counties, and central registries). There are a mandatory five digits to the code which identify the state and county; states may use two additional digits for further identification of entities. In North Dakota, seven digits are used.

**Federal Parent Locator Service (FPLS)** A computerized national location network operated by the federal Office of Child Support Enforcement (OCSE) which assists state IV-D programs in locating alleged fathers and noncustodial parents for the purposes of establishing paternity; establishing a child support obligation; and enforcing a child support obligation. In certain cases, the purposes may also include establishing and enforcing custody and visitation orders; processing adoption or foster care cases; and investigating parental kidnapping. The expanded FPLS includes the Federal Case Registry (FCR), the National Directory of New Hires (NDNH), and External Locate Sources.

**Federal Tax Intercept (FTI) Program** (See Federal Tax Refund Offset Program)

**Federal Tax Refund Offset Program** Program that collects arrearages from noncustodial parents through the interception of their federal income tax refund or an administrative payment such as federal retirement benefits. This program also incorporates the Passport Denial Program, which denies U.S. passports at the

time of application when the applicant's child support debts exceed \$5,000. The cooperation of state IV-D programs in the submittal of cases for tax interception is mandatory, while submittal of cases for administrative interception is optional. North Dakota does not participate in optional administrative interception. The Federal Tax Refund Offset Program is operated in cooperation with the Internal Revenue Service (IRS), the U.S. Department of Treasury's Financial Management Service (FMS), the U.S. Department of State (DOS), and state IV-D programs.

**Financial Institution Data Match (FIDM)** Process required by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in which a state IV-D program must enter into agreements with financial institutions doing business in their state for the purpose of securing information leading to the enforcement of child support orders. The state IV-D program must develop and operate, in coordination with financial institutions doing business in the state, a data match system in which financial institution account records are matched with noncustodial parents in IV-D cases. Financial institutions are required to encumber or surrender the assets of the delinquent noncustodial parent held by the institution in response to a notice of lien or levy.

**For Your Information (FYI)** Document issued by economic assistance programs in the Department of Human Services to County Social Services, generally used to communicate information (e.g., training dates, brochures, surveys, etc.) rather than to address policy.

**Foster Care** A program which provides financial support to a person, family, or institution that is raising a child or children who are not their own. Funding for placements may vary. For example, some placements are funded through the federal-state Foster Care program (IV-E) and others are funded through the state-only program.

**Full Faith and Credit** Doctrine under which a state must honor an order or judgment entered in another state.

**Full Faith and Credit for Child Support Orders Act (FFCCSOA)** Federal law effective October 20, 1994, which requires states to enforce child support orders made by other states if: the issuing state's tribunal had subject matter jurisdiction to hear and resolve the matter and enter an order; the issuing state's tribunal had personal jurisdiction over the parties; and reasonable notice and the opportunity to be heard was given to the parties. FFCCSOA also limits a state's ability to modify another state's child support order in instances when: the state tribunal seeking to modify the order has jurisdiction to do so; and the tribunal that originally issued the order no longer has continuing exclusive jurisdiction (CEJ) over the order either because the child and the parties to the case are no longer residents of the issuing state, or the parties to the case have filed written consent to transfer CEJ to the tribunal seeking to make the modification. Unlike the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), FFCCSOA does not amend Title IV-D of the Social Security Act and thus does not directly change IV-D program requirements, but affects interstate case processing.

**Garnishment** A legal proceeding under which part of a person's wages or assets are withheld for payment of a debt. Garnishment is a different remedy than income withholding.

**Genetic Testing** Analysis of inherited factors to determine biological fatherhood. Testing usually consists of analyzing genetic material from mother, child, and alleged father. The results are often used in contested cases to determine paternity or nonpaternity.

**Good Cause** A reason for which a Temporary Assistance for Needy Families (TANF) or Medicaid recipient is excused from cooperating with the services of the state IV-D program, such as past physical harm caused by the child's other parent. It also includes situations where rape or incest resulted in the conception of the child and situations where the recipient is considering placing the child for adoption. In North Dakota, good cause is determined by referring agencies. Good cause may also be applied in foster care situations.

**Guidelines** (See Child Support Guidelines)

**Home State** For purposes of making a controlling order determination under the Uniform Interstate Family Support Act (UIFSA), the state in which a child lived with a parent, or a person acting as parent, for at least

six consecutive months immediately preceding the time of filing of a petition for support. However, if a child is less than six months old, the state in which the child lived from birth with a parent, or a person acting as a parent, is the home state. A period of temporary absence of any of them is counted as part of the six-month period.

**Immediate Income Withholding** Requires that a noncustodial parent's income is subject to income withholding regardless of whether the noncustodial parent's payments are delinquent, unless statutory exceptions are met. In North Dakota, immediate income withholding applies to each judgment or order issued or modified on or after January 1, 1990.

**Income** As defined in North Dakota state law, income is any form of payment, regardless of source, owed to a noncustodial parent, including any earned, unearned, taxable or nontaxable income; workforce safety and insurance benefits; disability benefits; unemployment compensation benefits; and annuity and retirement benefits. Excluded for purposes of this definition are public assistance benefits administered under state law. All income is subject to income withholding for child support, pursuant to a child support order, but is protected by Consumer Credit Protection Act (CCPA) limits.

**Income Payer** As defined in North Dakota state law, an income payer means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to a noncustodial parent and includes a noncustodial parent if the noncustodial parent is self-employed.

**Income Withholding (IW)** Procedure by which deductions are made from income to pay a debt such as child support, spousal support, and dollar-specific medical support. An order for income withholding is administratively issued to an employer (in North Dakota, the term "income payer" is used) by the state IV-D program using a federally mandated form. Income withholding is a different remedy than garnishment.

**Incoming Interstate Case** A IV-D case established by a Responding State at the request of an Initiating State. Such requests are sent to the Responding State's Central Registry using federally mandated interstate forms.

**Information Memo (IM)** Document issued by economic assistance programs in the Department of Human Services to County Social Service Boards, generally used to address policy issues.

**Information Memorandum (IM)** Document issued by the federal Office of Child Support Enforcement (OCSE) which provides state IV-D programs with information on program practices that can be useful to program improvement.

**Informational Communication (IC)** Document issued by the State IV-D office as needed. The primary recipients of ICs are, with very few exceptions, the Regional IV-D offices. ICs generally serve the following purposes: to issue policy clarifications and interpretations; to notify and inform the Regional IV-D offices of an internal State IV-D office policy that may be of interest to the Regional IV-D offices, but does not directly affect their work; to disseminate select revised chapters of the Temporary Assistance for Needy Families (TANF), Medicaid, and Foster Care program manuals; and to issue interpretations of the Child Support Guidelines administrative rules.

**Initiating State** The state, usually a state IV-D program, that sends a request to another state (i.e., the Responding State), usually a state IV-D program, in interstate child support cases. The request, which must be sent to the Central Registry in the Responding State, may be for a specific action or for multiple actions including establishment of paternity, establishment of an order, enforcement of an order, review and adjustment of an order, change of payee or redirection of payment, and an administrative review of an income tax refund offset challenge. In cases in which a state IV-D program is attempting to establish paternity and an initial child support order on behalf of a custodial parent, and does not have long arm jurisdiction, the state must file a two-state action under the Uniform Interstate Family Support Act (UIFSA) guidelines, using federally mandated interstate forms. Generally, the Initiating State is the resident state of the custodial parent and child.

**Interactive Voice Response System (IVR)** (See Automated Voice Response System)

**Interstate Cases** Cases in which two or more states are involved in providing some level of service on a case. Generally, these are cases in which the dependent child and noncustodial parent live in different states.

**Issuing State** The state that issued the child support order.

**IV-A ("Four-A")** Reference to Title IV-A of the Social Security Act covering the Temporary Assistance for Needy Families (TANF) program.

**IV-A Case** A IV-D case in which a parent (or caretaker relative) and child are receiving public assistance benefits under the state's IV-A program, which is funded under Title IV-A of the Social Security Act. Applicants for assistance from IV-A programs are automatically referred to their state IV-D program in order to identify and locate the noncustodial parent; establish paternity; and establish and enforce a child support and medical support order. This allows states (and the federal government) to recoup or defray some of its public assistance expenditures with funds from the noncustodial parent.

**IV-D ("Four-D")** Reference to Title IV-D of the Social Security Act, which required that each state create a program to locate noncustodial parents; establish paternity; establish and enforce child support obligations; and collect and distribute support payments. Title IV-D also established the federal Office of Child Support Enforcement (OCSE).

**IV-D Case** A child support case where there has been a referral from Temporary Assistance for Needy Families (TANF), Medicaid, or Foster Care; an application from the custodial parent or noncustodial parent; or an interstate request from another state IV-D program. Generally, a IV-D case is composed of a custodial parent; a noncustodial parent or alleged father; and a child or children.

**IV-E ("Four-E")** Reference to Title IV-E of the Social Security Act, which established a federal-state program known as Foster Care that provides financial support to a person, family, or institution that is raising a child or children who are not their own.

**IV-E Case** A IV-D case in which the state is providing foster care benefits or services under Title IV-E of the Social Security Act to a person, family, or institution that is raising a child or children who are not their own. As with other public assistance cases, recipients are referred to their state IV-D program in order to identify and locate the noncustodial parent; establish paternity; and establish and enforce a child support and medical support order. This allows the state (and the federal government) to recoup or defray some of its public assistance expenditures with funds from the noncustodial parent.

**Judgment** The official decision or finding by a court based on the evidence submitted by the parties.

**Judicial Remedies** A general designation for a court's enforcement of child support obligations.

**Jurisdiction** The legal authority which a court or administrative agency has over particular persons and over certain types of cases, usually in a defined geographical area. (See also Concurrent Jurisdiction, Personal Jurisdiction, Subject-Matter Jurisdiction)

**Legal Father** A man who is recognized by law as the male parent of a child.

**Lien** A claim upon a noncustodial parent's real or personal property to prevent the sale or transfer of that property until a debt is satisfied.

**Litigation** A civil action in which a controversy is brought before the court.

**Locate** Process by which information on an individual is found for the purpose of establishing paternity; establishing a support obligation; enforcing a support obligation; establishing or enforcing custody and visitation determinations; processing adoption or foster care cases; and investigating parental kidnapping.

**Locate Information** Data (including social security number (SSN), date of birth (DOB), residential address, and employer) used for locate purposes.

**Long Arm Jurisdiction** Legal provision that permits one state to claim personal jurisdiction over someone who lives in another state. There must be some meaningful connection between the person and the state or district that is asserting jurisdiction in order for a court or agency to reach beyond its normal jurisdictional border. If not permitted, then the state must undertake a two-state action under the Uniform Interstate Family Support Act (UIFSA) guidelines for certain actions, such as establishing a support order. Other actions, such as direct income withholding, are allowed by UIFSA in such a way that neither a two-state action nor long arm jurisdiction is required.

**Medical Assistance Only (MAO)** Form of public assistance administered by states which provides benefits to recipients only in the form of medical, rather than financial, assistance. For example, Medical Assistance Only recipients are not receiving Temporary Assistance for Needy Families (TANF).

**Medical Support** Form of support which is related to medical purposes. Medical support must be enforced by the IV-D program if there is an order requiring the noncustodial parent to pay a dollar-specific amount for medical purposes for the child, or there is an order requiring the noncustodial parent to provide health insurance coverage for the child.

**Monthly Support Obligation** The amount of money a noncustodial parent is required to pay per month.

**Motion** An application to the court requesting an order or rule in favor of the party that is filing the motion. Motions are generally made in reference to a pending action and may address a matter in the court's discretion or concern a point of law.

**Multistate Employer** An organization that hires and employs people in two or more states. The multistate employer conducts business within each state and the employees are required to pay taxes in the state where they work. As with single-state employers, multistate employers are required by law to report all new hires to the State Directory of New Hires (SDNH) operated by their state government. However, unlike single-state employers, they have the option to report all of their new hires to the SDNH of only one state in which they do business rather than to all of them, if such reports are filed electronically or magnetically.

**Multistate Financial Institution Data Match (MSFIDM)** Process created by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) by which delinquent child support noncustodial parents are matched with accounts held in Financial Institutions (FIs) that are doing business in more than one state and that have elected to conduct the match with the federal Office of Child Support Enforcement (OCSE). States submit data to OCSE on noncustodial parents and their arrearages, and indicate whether the data should be submitted for MSFIDM. OCSE ensures the accuracy of the data and transmits the file to participating multistate financial institutions. The multistate financial institutions then match the information against their accounts and OCSE returns matches to the appropriate states. The states may then undertake action to place a lien on or seize all or part of the account.

**National Automated Clearing House Association (NACHA)** The association that establishes the standards, rules, and procedures that enable financial institutions to exchange electronic payments on a national basis.

**National Directory of New Hires (NDNH)** A national database containing new hire (NH) data from every state's State Directory of New Hires (SDNH) and federal agencies; unemployment insurance (UI) data from State Employment Security Agencies (SESAs); and quarterly wage (QW) data from SESAs and federal agencies. The federal Office of Child Support Enforcement (OCSE) maintains the NDNH as part of the expanded Federal Parent Locator Service (FPLS).

**National Law Enforcement Telecommunications System (NLETS)** A source of information to the State Parent Locator Service (SPLS) that provides driver's license information for an individual anywhere in the country. Vehicle information is also provided.

**National Medical Support Notice (NMSN)** A federally mandated form which is administratively issued by state IV-D programs to employers to enforce an order requiring the noncustodial parent to provide health insurance coverage for the child.



**National Personnel Records Center (NPRC)** Part of the National Archives and Records Administration's system of record storage facilities. The NPRC receives and stores both federal military and civilian personnel records.

**Network Data Mover (NDM)** (See CONNECT:Direct)

**New Hire (NH) Data** Data on a new employee that employers must submit within 20 days of hire to the State Directory of New Hires (SDNH). Minimum information must include the employee's name, address, and social security number (SSN), as well as the employer's name, address, and Federal Employer Identification Number (FEIN). Some states may require or request additional data, or may have shorter reporting timeframe requirements. Multistate employers have the option of reporting all of their newly hired employees to only one state in which they do business. This data is then submitted to the National Directory of New Hires (NDNH), where it is compared against child support order information contained in the Federal Case Registry (FCR). Federal agencies report this data directly to the NDNH. Also sometimes known as "W4 data," after the Internal Revenue Service (IRS) form which contains the mandatory data elements and which is often used by employers to report new hires.

**New Hire Reporting Program** Program mandated by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) that requires that all employers report newly hired employees to the State Directory of New Hires (SDNH) in their state. Multistate employers have the option of reporting all of their newly hired employees to only one state in which they do business. This data is then submitted to the National Directory of New Hires (NDNH), where it is compared against child support order information contained in the Federal Case Registry (FCR). Some data is also made available to states to find new hires that have been receiving unemployment insurance or other public benefits for which they may no longer be eligible, helping states to reduce waste and fraud, and to increase collections on defaulted student loans and Department of Education grant overpayments.

**NonAFDC Case** (See NonTANF Case)

**Noncustodial Parent (NCP)** The parent who does not have primary care, custody, and control of the child or, if a court has made a custody determination, the parent who does not have legal custody of the child.

**NonIV-A Case** (See NonTANF Case)

**NonIV-D Case** A case with a child support order that is not receiving IV-D services; that is, there is no open IV-D case.

**NonIV-D Order** An order in a nonIV-D case. NonIV-D orders which were established or modified in the state on or after October 1, 1998, must be included in the State Case Registry (SCR) for transmission to the Federal Case Registry (FCR). In North Dakota, payments on nonIV-D orders must be made to the State Disbursement Unit (SDU).

**NonTANF Case** A IV-D case in which the parent (or caretaker relative) and child are not receiving Temporary Assistance for Needy Families (TANF). Also known as a nonIV-A case.

**Obligated** A term meaning that a noncustodial parent is required to meet the terms of a court or administrative order.

**Obligation** Refers to what the noncustodial parent is required to do to meet the terms of a court or administrative order. Can take the form of child support, medical support, or spousal support. An obligation usually refers to a recurring, ongoing term, not a onetime debt.

**Obligee** The person to whom a child support obligation is owed, generally the custodial parent. May also be an entity to which a child support obligation is owed.

**Obligor** The person who is obliged to pay child support, generally the noncustodial parent.

**Office of Child Support Enforcement (OCSE)** The federal agency responsible for the administration of the child support program. Created by Title IV-D of the Social Security Act in 1975, OCSE is responsible for the development of child support policy; oversight, evaluation, and audits of state IV-D programs; and providing technical assistance and training to the state IV-D programs. OCSE operates the Federal Parent Locator Service (FPLS), which includes the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR). OCSE is part of the Administration for Children and Families (ACF), which is within the Department of Health and Human Services (DHHS).

**Office of Personnel Management (OPM)** The Federal Government's human resources agency.

**Offset** Amount of money intercepted from a noncustodial parent's state or federal income tax refund, or from an administrative payment such as federal retirement benefits, in order to satisfy a child support debt. In North Dakota, it may also refer to the amount of money intercepted from a noncustodial parent's lottery winnings.

**Omnibus Budget Reconciliation Act of 1993 (OBRA '93)** Federal legislation that contained provisions intended to remove some of the impediments to the ability of state IV-D programs to secure and enforce health insurance coverage for children. These provisions included prohibiting discriminatory health insurance coverage practices (e.g., mandating that insurance providers and employers offer dependent health coverage to children even if the child is not in the custody of the employee), creating Qualified Medical Child Support Orders (QMCSOs), and allowing employers to deduct the cost of health insurance premiums from the noncustodial parent's income.

**Order** Direction of a magistrate, judge, or properly empowered staff of an administrative agency.

**Order/Notice to Withhold Child Support** The federally mandated form which is administratively issued by state IV-D programs to employers for income withholding.

**Order to Show Cause (OSC or OTSC)** A court order directing a person to appear and bring forth any evidence as to why there should not be a finding of contempt of court and why remedies stated in the order should not be confirmed or executed.

**Order to Show Cause (OSC or OTSC) Hearing** A court hearing in which the judge or referee receives any evidence as to why the person served with the Order to Show Cause should not be found in contempt of court and why remedies stated in the order should not be confirmed or executed.

**Outgoing Interstate Case** An Initiating State's IV-D case in which a Responding State has established a IV-D case at the Initiating State's request by sending the request to the Responding State's Central Registry using federally mandated interstate forms.

**Passport Denial Program** Program created by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) that is operated under the auspices of the Federal Tax Refund Offset Program. Under the program, noncustodial parents with child support arrearages that exceed \$5,000 who have been submitted to the federal Office of Child Support Enforcement (OCSE) for federal tax refund offset are forwarded to the federal Department of State (DOS), which "flags" the noncustodial parent's name and refuses to issue a passport in the event a passport application is received. After the noncustodial parent makes satisfactory arrangements to pay the arrears, the state IV-D program can decertify the noncustodial parent with OCSE, which then requests that the DOS remove the noncustodial parent from the program.

**Pass-Through** (See Child Support Pass-Through)

**Paternity** Legal determination of fatherhood. If a child has been born out of wedlock, paternity must be established before child support or medical support can be ordered.

**Payee** Person or organization in whose name child support money is paid.

**Payer or Payor** Person who makes a payment, usually a noncustodial parent or someone acting on his or her behalf (e.g., an employer), or a custodial parent who is repaying a receivable.

**Personal Jurisdiction** The legal authority which a court or administrative agency has to bring a person into its legal process; jurisdiction over a defendant's personal rights, rather than merely over property interests.

**Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)** Federal legislation that provides a number of requirements for employers, public licensing agencies, and financial institutions, as well as state and federal child support agencies, to assist in the location of noncustodial parents and the establishment, enforcement, and collection of child support. This legislation created the New Hire Reporting program and the State and Federal Case Registries. Otherwise known as Welfare Reform.

**Petitioner** The party seeking relief by a petition.

**Plaintiff** A person who brings an action; the party who complains or sues in a civil case.

**Pleadings** Statements or allegations, presented in logical and legal form, which constitute a plaintiff's cause of action or a defendant's grounds of defense.

**Policy Interpretation Question (PIQ)** An official reply by the federal Office of Child Support Enforcement (OCSE) to an inquiry submitted by a state IV-D program concerning application of policy. Although questions often arise from a specific practice or situation, the responses are official statements of OCSE policy on the issue.

**P rearranged Payment or Deposit (PPD)** The format used for transmitting payments electronically to the custodial parent's bank account.

**Private Case** (See NonIV-D case)

**Proactive Matching** Process in which child support case data newly submitted to the Federal Case Registry (FCR) is automatically compared with previous submissions, as well as with the employment data in the National Directory of New Hires (NDNH). The resulting information is then returned to the appropriate state(s) for processing.

**Proceeding** The conduct of business before a judge, (or, in some other states, by another decision-maker such as a master or hearing officer) based on the evidence submitted by the parties.

**Pro Se** Appearing for one's self in a legal action.

**Public Assistance** Benefits granted from state or federal programs to aid eligible recipients (eligibility requirements vary among particular programs). Applicants for certain types of public assistance are automatically referred to their state IV-D program and may be required to cooperate with all or some services. This allows the state to recoup or defray some of its public assistance expenditures with funds from the noncustodial parent.

**Putative Father (PF)** (See Alleged Father)

**Qualified Medical Child Support Order (QMCSO)** An order, decree, or judgment, including approval of a settlement agreement, issued by a court or administrative agency of competent jurisdiction that provides for medical support for a child of a participant under a group health plan or provides for health benefit coverage to such child.

**Quarterly Wage (QW) Data** Data on all employees that must be submitted by employers on a quarterly basis to the State Employment Security Agency (SESA) in the state in which they operate. This data is then submitted to the National Directory of New Hires (NDNH). The data is then compared against child support order information contained in the Federal Case Registry (FCR). Federal agencies report this data directly to the NDNH. In North Dakota, the SESA also reports this data to the state IV-D program.

**Quasi-Judicial** A framework or procedure under the auspices of a state's judicial branch in which court officers other than judges process, establish, enforce and modify support orders, usually subject to judicial review. A court officer may be a magistrate, clerk, master, court examiner, or referee. He or she may or may not have to be an attorney, depending on the state's law.

**Recipient** A person or organization that receives support payments, Temporary Assistance for Needy Families (TANF) payments, or Medicaid benefits.

**Reciprocity** A relationship in which one state grants certain privileges to other states on the condition that they receive the same privileges.

**Referral** Request sent to a state IV-D program from another state program requesting that a IV-D case be established. In North Dakota, referrals are received on behalf of Temporary Assistance for Needy Families (TANF) recipients, Medicaid recipients, and Foster Care children.

**Regional Child Support Enforcement Unit (RCSEU)** North Dakota county-administered offices which provide IV-D services. Each RCSEU serves multiple counties. Also referred to as a Regional IV-D office.

**Regional IV-D Office** (See Regional Child Support Enforcement Unit (RCSEU))

**Respondent** The party answering a petition or motion.

**Responding State** The state, usually a state IV-D program, that receives a request from another state (i.e., the Initiating State), usually a state IV-D program, in interstate child support cases. The request, which must be sent to the Responding State's Central Registry, may be for a specific action or for multiple actions including establishment of paternity, establishment of an order, enforcement of an order, review and adjustment of an order, change of payee or redirection of payment, and an administrative review of an income tax refund offset challenge. Two-state actions must be filed under the Uniform Interstate Family Support Act (UIFSA) guidelines, using federally mandated interstate forms. Generally, the Responding State is the resident state of the noncustodial parent.

**Review and Adjustment** Process in which current financial information is obtained from the noncustodial parent and applied to the Child Support Guidelines to determine whether an adjustment of the child support amount should be pursued.

**Revised Uniform Reciprocal Enforcement of Support Act (RURESA)** Significantly revised, in 1968, the Uniform Reciprocal Enforcement of Support Act (URESA), which set forth reciprocal laws concerning establishing, enforcing, and modifying support obligations in interstate cases. Has now been superseded by the Uniform Interstate Family Support Act (UIFSA).

**Service by Publication** Service of process accomplished by publishing a notice in a newspaper or by posting on a bulletin board of a courthouse or other public facility, after a court determines that other means of service are impractical or have been unsuccessful. This procedure is not legal in every state. In North Dakota, service by publication is permitted in certain situations; state-specific requirements are found in Court Rules – Rules of Civil Procedure.

**Service of Process** The delivery of a writ or summons, in a manner provided by state-specific requirements, to a party for the purpose of obtaining jurisdiction over that party. In North Dakota, state-specific requirements are found in Court Rules – Rules of Civil Procedure.

**Spousal Support** Court ordered support of a spouse or ex-spouse. Is also sometimes referred to as alimony, although that is not the preferred term.

**Standardized Data Elements** Data elements that must be included in each child support case record that is transmitted to the Federal Case Registry (FCR).

**State Case Registry (SCR)** A database maintained by each state that contains information on individuals in all IV-D cases, and all nonIV-D orders established or modified after October 1, 1998. Information

submitted to the SCR is transmitted to the Federal Case Registry (FCR), where it is compared to cases submitted to the FCR by other states, as well as the employment data in the National Directory of New Hires (NDNH). Any matches found are returned to the appropriate state(s) for processing.

**State Directory of New Hires (SDNH)** A database maintained by each state that contains information regarding newly hired employees for the respective state. The data is then transmitted to the National Directory of New Hires (NDNH), where it is compared to the employment data from other states as well as child support data in the Federal Case Registry (FCR). Any matches found are returned to the appropriate state(s) for processing. In most states, the SDNH is contained in the State Parent Locator Service (SPLS) that is part of each state IV-D program; in others, it is operated by the State Employment Security Agency (SESA). In North Dakota, the SDNH is part of the state IV-D program.

**State Disbursement Unit (SDU)** The single site in each state where child support payments are processed. Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), each state must have an SDU to process all payments made on a IV-D case and all payments made on a nonIV-D case that come through income withholding. In North Dakota, state law requires that all child support payments, including nonIV-D payments not made through income withholding, be made to the SDU.

**State Employment Security Agency (SESA)** Agencies in each state that process unemployment insurance claims. These agencies are also repositories of quarterly wage data (information on all employees submitted by employers) which they submit to the National Directory of New Hires (NDNH) along with the unemployment insurance claim data. In North Dakota, this wage and unemployment data is also reported to the state IV-D program. In some states, the SESA also operates the State Directory of New Hires (SDNH), which contains data submitted by employers on newly hired employees. Data submitted to the NDNH is then compared against child support order information contained in the Federal Case Registry (FCR). North Dakota's SESA is Job Service North Dakota. The state IV-D program, and not Job Service North Dakota, operates the SDNH.

**State IV-D Agency** The agency established and designated to be the single and separate organizational unit to administer the IV-D program in each state. In North Dakota, this agency is the Child Support Enforcement Division within the Department of Human Services. (See also State IV-D office)

**State IV-D Office** The Child Support Enforcement Division within the Department of Human Services. This office is the agency established and designated to be the single and separate organizational unit to administer the IV-D program in North Dakota. (See also State IV-D Agency)

**State IV-D Program** A state's Child Support Enforcement program.

**State Parent Locator Service (SPLS)** A unit within the state IV-D program, the purpose of which is to locate information on individuals in order to establish paternity, establish a support obligation, and enforce a support obligation. In addition, it acts as the conduit to request and receive information from the Federal Parent Locator Service (FPLS) for those purposes as well as, in certain cases, others including establishing and enforcing custody and visitation orders; investigating parental kidnapping; and processing adoption or foster care cases.

**State Tax Intercept (STI) Program** (See State Tax Offset Program)

**State Tax Offset Program** Program that collects arrearages from noncustodial parents through the interception of their state income tax refund. In North Dakota, the State Tax Offset Program is operated in cooperation with the Office of State Tax Commissioner.

**Stipulation (Stip)** An agreement by the parties made in a judicial or administrative proceeding.

**Subject-Matter Jurisdiction** Jurisdiction over the nature of the case and the type of relief sought; the extent to which a court or administrative agency can rule on the conduct of persons or the status of things.

**Subpoena** A process issued by a court compelling a witness to appear at a judicial proceeding. Sometimes the process will also direct the witness to bring documentary evidence to the court (also known

as a subpoena duces tecum). The state IV-D program may also issue administrative subpoenas for the production of books, records, or papers when providing services on a IV-D case.

**Summons** A notice to a defendant that an action against him or her has been commenced in the court issuing the summons and that a judgment will be taken against him or her if the complaint is not answered within a certain time.

**Support Order** A judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court (or in some other states, by an administrative agency of competent jurisdiction) for the support and maintenance of a child. This includes a child who has attained the age of majority under the law of the issuing state, or the parent with whom the child is living. Support orders can incorporate the provision of monetary child support, medical support, and spousal support; health insurance coverage; payment of arrearages; reimbursement of costs and fees, interest and penalties; and other forms of relief.

**SWAP** Funding method, effective January 1, 1998, which fundamentally changed the manner in which economic assistance programs were funded in North Dakota. Under SWAP, counties are not responsible to pay any share of the grant costs associated with economic assistance programs. The nonfederal share of those grant costs are paid entirely by the state. In exchange for eliminating the counties' obligation to provide funding for the grant costs, the counties are responsible for the local administrative costs of the economic assistance programs (including costs for the state IV-D program). (SWAP is not an acronym.)

**Temporary Assistance for Needy Families (TANF)** Time-limited public assistance payments made to eligible families, based on Title IV-A of the Social Security Act. TANF replaced Aid to Families with Dependent Children (AFDC, otherwise known as welfare) when the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was signed into law in 1996. The program provides parents with job preparation, work, and support services to help them become self-sufficient. Applicants for TANF benefits are automatically referred to their state IV-D program in order to establish paternity and establish and enforce child support for their children from the noncustodial parent. This allows the state to recoup or defray some of its public assistance expenditures with funds from the noncustodial parent.

**Third Party Liability (TPL)** **Third Party Liability (TPL)** The legal obligation of third parties, i.e., certain individuals, entities, or programs, to pay all or part of the expenditures for medical assistance. The Medicaid program by law is intended to be the payer of last resort; that is, all other available third party resources must meet their legal obligation to pay claims before the Medicaid program pays for the care of an individual eligible for Medicaid.

**Tribunal** The court, administrative agency, or quasi-judicial agency authorized to establish or modify support orders or to determine parentage. In North Dakota, only courts are authorized to do so.

**Two-State Action** Action a state must file under the Uniform Interstate Family Support Act (UIFSA) guidelines when it does not have long arm jurisdiction (i.e., cannot legally claim personal jurisdiction over a noncustodial parent who lives in another state). This is usually in cases where a state is trying to establish an initial child support order on behalf of a resident custodial parent. Some actions, such as direct income withholding, do not require a two-state action even if the initiating state does not have long arm jurisdiction; direct income withholding is permitted under UIFSA.

**Unclaimed Funds** Support payment that cannot be disbursed because the identity of the payer is unknown, or the address of the payee is unknown.

**Unemployment Insurance (UI) Claim Data** Data on unemployment insurance applicants and claimants submitted by State Employment Security Agencies (SESAs) on a quarterly basis to the National Directory of New Hires (NDNH). This data is then compared against child support order information contained in the Federal Case Registry (FCR). In North Dakota, the SESA also reports this data to the state IV-D program.

**Uniform Interstate Family Support Act (UIFSA)** Laws enacted at the state level to provide mechanisms for establishing and enforcing child support obligations in interstate cases. Based on model legislation that was drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to revise and replace the Uniform Reciprocal Enforcement of Support Act (URESA). The provisions of UIFSA supersede

those of URESA, although some URESA provisions may remain in effect (some states have rescinded all of URESA, while others have left in place those provisions not specifically superseded by UIFSA). In North Dakota, URESA was repealed in whole. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) mandated that all states adopt UIFSA without modification by the state. In North Dakota, UIFSA became effective August 1, 1995.

**Uniform Parentage Act (UPA)** Laws enacted at the state level to provide mechanisms for establishing paternity. Based on model legislation that was drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). States may adopt all or portions of the UPA, but are not required to do either. In North Dakota, the UPA was adopted in 1975 and it has been revised since that time.

**Uniform Reciprocal Enforcement of Support Act (URES)** Law first promulgated in 1950 which provided a mechanism for establishing, enforcing, and modifying support obligations in interstate cases. Was revised by the Revised Uniform Reciprocal Enforcement of Support Act (RURES). Has now been superseded by the Uniform Interstate Family Support Act (UIFSA).

**Unreimbursed Public Assistance (UPA)** Money paid in the form of public assistance (for example, Temporary Assistance for Needy Families (TANF) or older Aid to Families with Dependent Children (AFDC) expenditures) which has not yet been recovered by retaining assigned child support.

**Wage Withholding** (See Income Withholding – the preferred term)

### **15-39.1-30. Confidentiality of records.**

All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the teacher has given written consent to have the information disclosed.
2. A person legally representing the teacher, upon proper proof of representation, and unless the teacher specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit, years of age, employer and employee contribution amounts, and salary. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal law. Any information provided to the member's participating employer under this subsection must remain confidential except as provided in subsection 6.
5. The administrative staff of the public employees retirement system for purposes relating to membership and benefits determination.
6. State or federal agencies for the purpose of validating member eligibility or employer compliance with existing state or federal law.
7. Member interest groups approved by the board, limited to information concerning the member's death.

**Source:** S.L. 1987, ch. 224, § 1; 2001, ch. 169, § 5.



**ZUGER KIRMIS & SMITH**

**COUNSELORS AND ATTORNEYS AT LAW**

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National Board of Trial Advocacy

March 2, 2005

*3 pm on 3/9*

Senator Judith Lee  
Chairman, Senate Human Services Committee  
North Dakota State Capitol

**Re: Hearing on HB 1172**

Chairman Lee:

Thank you again for allowing Supportkids Inc. the opportunity to testify on this important bill. Eric Rosenkoetter, General Counsel for Governmental Affairs with Supportkids, will be in Bismarck next Wednesday, March 9, 2005. Please schedule the continued hearing on HB 1172 at any time on Wednesday, March 9<sup>th</sup>.

Again, thank you for your cooperation with this matter. Supportkids greatly appreciates the courtesy you have extended and looks forward to testifying before your Committee.

Sincerely,

  
Paul Sanderson  
Lobbyist for Supportkids, Inc.

Cc: Eric Rosenkoetter

**SUMMARY OF SUPPORTKIDS' TESTIMONY  
IN OPPOSITION TO HOUSE BILL 1172**

**SENATE HUMAN SERVICES COMMITTEE  
SENATOR JUDY LEE, CHAIR  
MARCH 9, 2005**

- PRIVATE CHILD SUPPORT COLLECTION AGENCIES HAVE NO OBJECTION TO BEING LICENSED IF EITHER THE CUSTODIAL PARENT OR NON-CUSTODIAL PARENT RESIDE IN NORTH DAKOTA.
- CLIENTS *SHOULD NOT* BE ABLE TO TERMINATE THEIR CONTRACT AT WILL – THEY *SHOULD* BE ABLE TO TERMINATE:
  - WITHIN 15 DAYS OF SIGNING THE CONTRACT;
  - AFTER 12 CONSECUTIVE MONTHS WITHOUT PAYMENT;
  - IF THE STATE CHILD SUPPORT AGENCY BEGINS COLLECTING FOR THEM.
- PRIVATE AGENCIES SHOULD HAVE ALL COLLECTIONS SENT TO THE STATE DISBURSEMENT UNIT, AND THE STATE CHILD SUPPORT AGENCY SHOULD SEND PAYEMENTS TO WHATEVER ADDRESS SPECIFIED BY THE CUSTODIAL PARENT.
- IF THE STATE CAN'T COLLECT CURRENT SUPPORT FOR PARENTS, THE PARENTS SHOULD HAVE THE RIGHT TO HIRE A PRIVATE AGENCY TO COLLECT THEIR CURRENT SUPPORT. THERE IS NO LAW THAT PREVENTS A CUSTODIAL PARENT FROM SPENDING CHILD SUPPORT AS THEY SEE FIT IF THEY BELIEVE THAT IT IS IN THEIR CHILD'S BEST INTEREST.

HOUSE BILL 1172  
TESTIMONY ON BEHALF OF SUPPORTKIDS, INC.  
SENATE HUMAN SERVICES COMMITTEE  
SENATOR JUDY LEE, CHAIR  
MARCH 9, 2005

Madam Chair, honorable members of the Human Services committee, I am Eric Rosenkoetter, and I am here to speak on behalf of Supportkids, Inc., in opposition to Section 1 of House Bill 1172.

## INTRODUCTION

As a brief introduction, I am Executive Counsel for Supportkids and have spent the past ten years, or about half of my legal career, practicing in the area of child support. Before joining Supportkids several years ago, I worked for the state of Missouri in various capacities, including serving as Managing Litigation Attorney for the state's Division of Child Support Enforcement. I also had the privilege of presiding over many thousands of administrative child support hearings.

Supportkids, Inc., is a private child support enforcement agency that collects child support in each of the fifty states. The fundamental reason our company was founded in 1991 is that we recognized the unfortunate fact that government child support programs will never have the funding necessary to collect all of the child support that is due to parents. **Nationally, unpaid child support totals over \$95,000,000,000 (ninety-five billion dollars). Unpaid child support in North Dakota alone totals over \$152,000,000 (one hundred and fifty-two million dollars).** We believe that custodial parents deserve to have other options, beyond just the government, when seeking assistance in collecting child support. Virtually all of our clients tried collecting through government child support agencies before turning to us.

## BACKGROUND

Supportkids has an extremely collaborative and cooperative relationship with the Federal Office of Child Support Enforcement as well as the majority of state child support agencies. Our procedures in those cooperative states are fairly straightforward.

Typically, a custodial parent will come to us after not having any success for a number of years trying to collect through his or her state agency. **In over 90% of our cases, the whereabouts of the non-custodial parent are unknown, which is why the state was unable to collect.** We put considerable resources into locating the missing parent, and if we are successful, we instruct the obligor, or his employer to send payments to the state disbursement unit for proper accounting and disbursement. The disbursement unit follows the distribution rules and applies the amounts Supportkids has collected first to current support,

then to arrears, and keeps any portion that is assigned to the state. Portions not assigned to the state are then sent to Supportkids, at our clients' requests, where we deduct our fee and forward the rest to our client. The fee which is retained by Supportkids is applied against a contract balance which our client requested we collect.

This procedure works very efficiently, and most state child support agencies realize that by virtue of this cooperative relationship, they are able to get credit for Supportkids' collections for federal accounting purposes since all payments are made through the state's disbursement unit. Ultimately, that qualifies their agency for more federal incentive dollars.

Unfortunately, uncooperative states like North Dakota, which are a distinct minority, refuse to allow the state disbursement unit to send payments directly to private agencies. In some cases that makes collecting our fee less efficient and more costly. Often, in many of these cases, the private agency must ask the client to close their case with the state agency and then asks the obligor or employer send payments directly to the private agency. The private agency must then provide the state agency with an affidavit of payments so the state can make sure its records reflect all payments. That, of course, involves more cost to both the private agency and the state agency.

## LICENSING

Since the early 1990s, only six states have passed laws specifically regulating private agencies. In three of those states, the economic restrictions contained in the bills have since prevented any private agencies from offering services in those states, leaving parents with few options when the government can't collect for them. Only one state, Texas, passed a law which contains substantive consumer protection provisions, and that bill was supported by private collection agencies.

***Supportkids has absolutely no objection to a bill requiring it to be licensed in North Dakota if either the custodial parent or the non-custodial parent resides in the state.*** We also support relevant consumer protection provisions.

## TERMINATION

The North Dakota Child Support Enforcement Division ("Division") argues it is often difficult for parents to get out of a contract. Indeed, that is true to some extent with all contracts which, by definition, confer obligations and responsibilities on both parties to the contract. Most, if not all, private agencies allow a client to terminate the contact within one or two weeks of signing the contract or if twelve consecutive months go by without a collection.

***However, to allow a parent to terminate a contact at any time allows them to receive the benefit of services without the obligation to pay the***

**contracted fee.** We expend thousands of dollars on many cases by the time the obligor has been located and the first payment secured. To allow a client to escape paying any fee for those services is patently inequitable and without precedent.

## **REDIRECTION OF PAYMENTS**

The Division is quite correct in stating that child support should first be applied to current support and then any remainder to arrears. It then argues that because some company's contracts provide that all support collect will be applied to an arrearage balance specified in the contract, it would be illegal for the state to redirect payments to private agencies as it would be a violation of the distribution laws. That is a simple misconception, as is the assertion that redirection may cause private agencies to receive support assigned to the state.

If private agencies have all collections sent to the state disbursement, the disbursement unit will properly account for those funds by applying them first to current support then to arrears, and will keep for the state any assigned support. It is an automated process, and this proper accounting will occur regardless of whether the payments are then disbursed to the obligee or the obligee's collection agency. The internal accounting private agencies use to determine the balance remaining on their contract has no impact on this whatsoever. The state's payment records, naturally, will reflect the same accounting and distribution regardless of the address to which payments are sent.

***The Federal Office of Child Support Enforcement has issued numerous policy documents recommending that state child support agencies send payments to whatever address specified by a custodial parent.*** I have attached excerpts from some of the policy documents.

## **CURRENT SUPPORT**

The Division states that "as a matter of public policy, attorneys are not allowed to charge contingency fees for the collection of a current monthly support obligation. This bill would apply that policy consistently to private collection agencies as well." Although the Division provides no authority for this "public policy", presumably it is referring to the restriction on contingency fees contained in Rule 1.5(d)(1) of the North Dakota Rules of Professional Conduct. However, the actual public policy for Rule 1.5(d)(1) would dictate the opposite conclusion.

Rule 1.5(d) states that "A lawyer shall not enter into an arrangement for, charge, or collect: . . . (1) any fee in a domestic relation matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof. . ."

Alone, this is arguably ambiguous as to whether a contingency fee is actually prohibited in the setting of an amount of support or, rather, in the collection of support. Fortunately, the comments to Rule 1.5 of the American Bar Association's Model Rules of Professional Conduct, which in this case North Dakota adopted verbatim, provide clarification. "This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial offers because such contracts do not implicate the same policy concerns."

The policy concern, which has been cited by virtually every state which has addressed the issue, is in preventing the encouragement of divorce and the hindrance of reconciliation which could result if attorneys were given financial interest in property settlements. As stated in the Model Rules' comments, that policy concern is not an issue post-judgment, and would likewise not be a concern either in regard to collection of past-due support or current support.

The Division correctly states "the right to child support belongs to the children and cannot be waived or negotiated by the parents." Indeed, that is the law in most states. However, it is a misapplication of that law to argue that that premise prevents parents from paying for support services with current support. Indeed, some state child support agencies charge a fee which is taken from current support. All of the cases dealing with waiver or negotiation of child support relate only to the custodial parent agreeing *with the non-custodial parent* to accept less than the court-ordered amount. Such "agreements" can sometimes make later enforcement of the full amount difficult due to equitable theories such as estoppel or waiver by acquiescence. The Division's premise has absolutely no applicability in the present instance since the custodial parent is, in fact, attempting to collect the full amount from the non-custodial parent. The obligor is not "getting a break." The Division's argument fails because what the Division is really doing is telling a custodial parent what he or she can, or can't, purchase with the child support.

Custodial parents are charged with making decisions how best to apply child support received to serve the best interests of their children. A parent may choose to have their child reside in a better home, and therefore spend more of the current support on rent or a mortgage. A parent may want a child to receive better grades in school and therefore spend some current support on a private tutor rather than rely solely on the classroom education. A custodial parent may do this because he or she believes it to be in the child's best interest. **Likewise, if a parent has had no success getting support collected through the North Dakota child support agency, that parent has the sole discretion in deciding whether to use current support to pay for a collection agency to bring funds into the household, if they believe it is in the child's best interest.**

## CONCLUSION

Section 1 of House Bill 1172 limits the collection options of parents who have had no success trying to get their child support collected through their state child support agency. In effect, the bill assumes parents aren't smart enough to decide what is best for their children and dictates how they must spend their child support. It is not within the province of a state child support agency to impose such mandates upon responsible custodial parents.

Is a legislative solutions needed at this time? Probably not. As I have discussed, the North Dakota Child Support Enforcement Division's legal arguments have been misapplied to the facts, which I believe simply reflects a lack of understanding as to how private agencies do business. I am aware of the criticisms lodged against private agencies by the Division. However, it is my firm belief that if the Division has any criticism of the business practices of private agencies, those problems can undoubtedly be resolved simply through meaningful communication and negotiation. In fact, I have attached several letters I sent, e-mailed and faxed to the Division's Director, Mike Schwindt, in January and March 2003. In those letters I openly offer to address any concerns Mr. Schwindt has with private agencies. All of my letters went unanswered. I believe that a more businesslike approach for the Division would be for it to discuss its problems with the private agencies before trying to add yet another new law to the books.

Accordingly, I respectfully suggest this honorable committee adopt one of two amendments we have prepared. The first simply deletes Section 1, based upon the belief that the Division's concerns can be addressed in a non-legislative fashion or, alternatively, that we can work with the Division between now and next session to build a better bill that protects consumers without limiting their collection options.

The second proposed amendment requires that private agencies be licensed if either the custodial parent or non-custodial parent reside in North Dakota. Collections must be sent through the state disbursement unit, and the Division will send the payments to whatever address the custodial parent specifies. Clients can terminate the contract within 15 days of signing, if 12 consecutive months pass without a collection or if the Division begins collecting on their behalf. Fees, of course, may not be taken on collections effectuated by the Division.

Madam Chair, honorable members of the Committee, this concludes my testimony and I will be very pleased to answer any questions.

## **EXCERPTS FROM FEDERAL POLICY DOCUMENTS**

**"While the nation's child support program has become much more effective at collecting child support in recent years, too many children still do not receive the support that they need and deserve. . . We recognize that private agencies are a good option for some parents. . ."**<sup>1</sup>

**"We want to make clear that, for those who wish to hire a private agency to assist them in collecting child support, state child support agencies should cooperate with the private collectors that parents have hired. . . We are clarifying that federal law allows the states to send the parents' child support payments to them in care of their private collection agencies."**<sup>2</sup>

**"OCSE strongly believes that improved customer service, including greater responsiveness to the reasonable needs and desires of the custodial parents that we serve, is vital to the continued support for and success of the IV-D program. In our view, it is good customer service and good public policy for a state to send child support payments to the custodial parent at the address that he/she requests. No one is in a better position to determine where the custodial parent should receive child support payments than the custodial parent him/herself."**<sup>3</sup>

<sup>1</sup> Quote from United States Department of Health & Human Services Secretary Tommy G. Thompson, in HHS News Release dated December 19, 2002.

<sup>2</sup> Quote from HHS Assistant Secretary for Children and Families Wade F. Horn, in HHS News Release dated December 19, 2002.

<sup>3</sup> Quote from Federal Office of Child Support Enforcement Commissioner Sherri Z. Heller, in OCSE policy document DCL-02-35.



**LETTERS, E-MAILS & FAXES  
FROM SUPPORTKIDS  
TO  
NORTH DAKOTA CHILD SUPPORT DIRECTOR  
MIKE SCHWINDT**

# supportkids<sup>™</sup>

THE CHILD SUPPORT EXPERTS

January 3, 2003

State of North Dakota  
Child Support Enforcement  
Attn: Mike Schwindt, Director  
1929 North Washington  
P.O. Box 7190  
Bismarck, ND 58507-7190

Re: Customer Service & Cooperation

Dear Mr. Schwindt:

As you may know, Supportkids, Inc. is a private child support enforcement agency which operates in each of the fifty states. We were founded in 1991 by Casey Hoffman, former IV-D director for the state of Texas. Our Chief Operations Officer is Kathy Kerr, former IV-D director for the state of New Hampshire. Supportkids is the largest private child support enforcement agency in the nation and has grown consistently over the past eleven years. We continue to seek greater interface between the public and private sectors.

By way of brief introduction, I am Chief Compliance Officer for Supportkids and, as such, my responsibilities include fostering cooperative relationships with state IV-D agencies and responding to miscommunications which occasionally occur at the state or county level. About half of my legal career has been in public service, with four years as a child support administrative hearing officer, several years as a IV-D regional managing attorney and most recently as counsel for the Missouri Senate. I mention this background only to let you know that I am a bit familiar with IV-D issues.

I offer this letter for two reasons. First, I offer my services to you at any time you have questions, concerns or comments regarding our business. Second, your agency adopted a policy in August 2002 to refuse our requests for pay histories and our clients' requests for change of address. At that time, there was little guidance from OCSE defining recommended relationships between IV-D agencies and private child support enforcement agencies ("PCSEAs"). However, in light of recent memoranda issued by the Federal Office of Child Support Enforcement, I very respectfully suggest that now may be an appropriate time to reexamine that policy. This suggestion is offered in the spirit of "family-friendliness and customer satisfaction" espoused by Commissioner Heller in DCL-02-35.

Regarding pay histories, IM-02-09 encourages IV-D agencies and PCSEAs to "foster an environment of cooperation" and the "mutual exchange of important case information" such as pay histories.

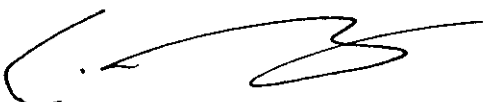
Regarding requests for change of address, DCL-02-35 provides:

OCSE strongly believes that improved customer service, including greater responsiveness to the reasonable needs and desires of the custodial parents that we serve, is vital to the continued support for and success of the IV-D program. In our view, it is good customer service and good public policy for a state to send child support payments to the custodial parent at the address that he/she requests. No one is in a better position to determine where the custodial parent should receive child support payments than the custodial parent him/herself.

PIQ-02-02 addresses concerns of IV-D agencies regarding change of address issues and provides: "In sum, state IV-D programs can send payments in the custodial parent's name to the address that he/she provides, unless otherwise prohibited by state law. States may not refuse to honor a custodial parent's request that payments be sent to a specific address on the basis that federal statute or regulations preclude such actions."

I believe that cooperation between us works to everyone's benefit, and I would welcome the opportunity to discuss your thoughts on these issues, at your convenience.

Sincerely,



Eric Rosenkoetter  
Chief Compliance Officer  
(512) 437-6133  
eric.rosenkoetter@supportkids.com

# supportkids<sup>™</sup>

THE CHILD SUPPORT EXPERTS

March 19, 2003

Child Support Enforcement  
Attn: Mike Schwindt, Director  
1929 North Washington  
P.O. Box 7190  
Bismarck, ND 58507-7190

Re: Cooperation

Dear Mr. Schwindt:

As you may know, Supportkids, Inc. is a private child support enforcement agency which operates in each of the fifty states. We were founded in 1991 by Casey Hoffman, past president of the Massachusetts Bar Association and former IV-D director for the state of Texas. Our Chief Operating Officer is Kathy Kerr, former IV-D director for the state of New Hampshire. Supportkids is the largest private child support enforcement agency in the nation and has grown consistently over the past twelve years. We continue to seek greater interface between the public and private sectors and are a founding member of the Child Support Enforcement Council (<http://www.csecouncil.org>), an industry council dedicated to educating the public and private sectors regarding private child support enforcement agencies and developing and maintaining industry standards.

By way of brief introduction, I am Chief Compliance Officer for Supportkids and, as such, my responsibilities include fostering cooperative relationships with state IV-D agencies and responding to miscommunications which occasionally occur at the state or county level. About half of my legal career has been in public service, having spent four years presiding over administrative child support hearings, several years serving as a IV-D regional managing attorney and most recently serving as counsel for the Missouri Senate. I mention this background only to let you know that I am a bit familiar with IV-D issues.

I offer this letter for two reasons. First, I offer my services to you at any time you have questions, concerns or comments regarding our business. Second, your agency expressed a policy to us in August 2002 which was to refuse our clients' requests for change of address. At that time, there was little guidance from OCSE defining recommended relationships between IV-D agencies and private child support enforcement agencies. However, in light of recent memoranda issued by the Federal Office of Child Support Enforcement, I very respectfully suggest that now may be an appropriate time for us to consider a more cooperative relationship. This suggestion is offered in the spirit of "family-friendliness and customer satisfaction" espoused by Commissioner Heller in DCL-02-35.

Regarding requests for change of address, DCL-02-35 provides:

OCSE strongly believes that improved customer service, including greater responsiveness to the reasonable needs and desires of the custodial parents that we serve, is vital to the continued support for and success of the IV-D program. In our view, it is good customer service and good public policy for a state to send child support payments to the custodial parent at the address that he/she requests. No one is in a better position to determine where the custodial parent should receive child support payments than the custodial parent him/herself.

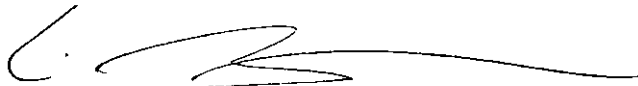
This view was reiterated, at length, by Dr. Wade Horn, Assistant Secretary for Children and Families, U.S. Department of Health and Human Services, on February 4, 2003, at the NCSEA Conference in Washington, D.C.

If private agencies can collect child support which is otherwise not collectible, and those collections are accounted for through your disbursement unit, it would undoubtedly be a win-win situation for everyone.

I am very hopeful that after your agency has had an opportunity to reflect on these issues, it will consider joining the majority of states which have chosen to work cooperatively with private agencies.

I would welcome the opportunity to discuss your thoughts on these issues, at your convenience.

Sincerely,



Eric Rosenkoetter  
Chief Compliance Officer  
(512) 437-6133  
eric.rosenkoetter@supportkids.com

# Send Confirmation Report

Name: CHILD SUPPORT ENFORCEMENT

ID: 5124376030

19 Mar '03 12:51PM Page 1

Job	Start time	Usage	Phone Number or ID	Type	Pages	Mode	Status
108	3/19 12:50PM	0'47"	917013286575.....	Send.....	3/ 3	EC144	Completed.....
Total:		0'47"	Pages sent: 3	Pages printed: 0			

**support**  
THE CHILD SUPPORT EXPERTS

P.O. Box 49459  
Austin, TX 78765  
Phone (512) 437-6133  
Fax (512) 437-7400

## FACSIMILE TRANSMITTAL

To: Mike Schwandt Fax: (701) 328-6575

From: Eric Rosenkoetter Date: March 19, 2003

Re: Cooperation Pages: 3

CC: \_\_\_\_\_

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

**Eric Rosenkoetter**

**From:** Eric Rosenkoetter  
**Sent:** Monday, March 03, 2003 12:25 PM  
**To:** 'Mike Schwindt (soschm@state.nd.us)'  
**Subject:** FW: My Letter of Janaury 3, 2003

Dear Mr. Schwindt:

I anticipate being in the office the majority of this week if you or your staff would be available to discuss the potential of a cooperative relationship between our agencies.

I am very hopeful that after your agency has had an opportunity to reflect on the issues described in my letter, it will consider joining the majority of states which have chosen to work cooperatively with private agencies. If there is a chance that private agencies may be able to collect child support which was otherwise not collectible, and those collections are accounted for through your disbursement unit, it would undoubtedly be a win-win situation for everyone.

I thank you for your time and consideration.

Sincerely,

Eric Rosenkoetter  
Chief Compliance Officer  
Supportkids, Inc.  
(512) 437-6133

-----Original Message-----

**From:** Eric Rosenkoetter  
**Sent:** Thursday, January 16, 2003 9:12 AM  
**To:** 'soschm@state.nd.us'  
**Subject:** My Letter of Janaury 3, 2003

Dear Mr. Schwindt:

I hope by now you have received my letter of January 3, 2003, which discussed various cooperation issues and briefly touched on the various documents recently released by OCSE addressing those issues.

At your convenience, I would like to discuss your thoughts on these matters. Please let me know if there is any time in the next several weeks when you would be available for a telephone call.

Thank you very much for your time and consideration.

Sincerely,

Eric Rosenkoetter  
Chief Compliance Officer  
Supportkids, Inc.  
(512) 437-6133

2/17/2005

**Eric Rosenkoetter**

**From:** Eric Rosenkoetter  
**Sent:** Wednesday, March 19, 2003 12:34 PM  
**To:** 'Mike Schwindt (soschm@state.nd.us)'  
**Subject:** Cooperation

Dear Mr. Schwindt:

As you may know, Supportkids, Inc. is a private child support enforcement agency which operates in each of the fifty states. We were founded in 1991 by Casey Hoffman, past president of the Massachusetts Bar Association and former IV-D director for the state of Texas. Our Chief Operating Officer is Kathy Kerr, former IV-D director for the state of New Hampshire. Supportkids is the largest private child support enforcement agency in the nation and has grown consistently over the past twelve years. We continue to seek greater interface between the public and private sectors and are a founding member of the Child Support Enforcement Council (<http://www.esecouncil.org>), an industry council dedicated to educating the public and private sectors regarding private child support enforcement agencies and developing and maintaining industry standards.

By way of brief introduction, I am Chief Compliance Officer for Supportkids and, as such, my responsibilities include fostering cooperative relationships with state IV-D agencies and responding to miscommunications which occasionally occur at the state or county level. About half of my legal career has been in public service, having spent four years presiding over administrative child support hearings, several years serving as a IV-D regional managing attorney and most recently serving as counsel for the Missouri Senate. I mention this background only to let you know that I am a bit familiar with IV-D issues.

I offer this letter for two reasons. First, I offer my services to you at any time you have questions, concerns or comments regarding our business. Second, your agency expressed a policy to us in August 2002 which was to refuse our clients' requests for change of address. At that time, there was little guidance from OCSE defining recommended relationships between IV-D agencies and private child support enforcement agencies. However, in light of recent memoranda issued by the Federal Office of Child Support Enforcement, I very respectfully suggest that now may be an appropriate time for us to consider a more cooperative relationship. This suggestion is offered in the spirit of "family-friendliness and customer satisfaction" espoused by Commissioner Heller in DCL-02-35.

Regarding requests for change of address, DCL-02-35 provides:

OCSE strongly believes that improved customer service, including greater responsiveness to the reasonable needs and desires of the custodial parents that we serve, is vital to the continued support for and success of the IV-D program. In our view, it is good customer service and good public policy for a state to send child support payments to the custodial parent at the address that he/she requests. No one is in a better position to determine where the custodial parent should receive child support payments than the custodial parent him/herself.

This view was reiterated, at length, by Dr. Wade Horn, Assistant Secretary for Children and Families, U.S. Department of Health and Human Services, on February 4, 2003, at the NCSEA Conference in Washington, D.C.

If private agencies can collect child support which is otherwise not collectible, and those collections are accounted for through your disbursement unit, it would undoubtedly be a win-win situation for everyone.

2/17/2005



I am very hopeful that after your agency has had an opportunity to reflect on these issues, it will consider joining the majority of states which have chosen to work cooperatively with private agencies.

I would welcome the opportunity to discuss your thoughts on these issues, at your convenience.

Sincerely,

Eric Rosenkoetter  
Chief Compliance Officer  
Supportkids, Inc.  
(512) 437-6133

2/17/2005

**TESTIMONY  
HOUSE Bill 1172 - DEPARTMENT OF HUMAN SERVICES  
SENATE HUMAN SERVICES COMMITTEE  
JUDY LEE, CHAIRMAN  
FEBRUARY 28, 2005**

Chairman Lee, members of the Senate Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Division of the Department of Human Services. I am here to ask for your favorable consideration of Engrossed House Bill 1172.

Section One addresses private collection agencies who attempt to enforce child support obligations for a fee charged to the family. As this industry grows, we also see a national trend for state legislatures to pass laws ensuring that the families are protected. The intent of the proposed new section is not to prohibit these companies from operating in North Dakota, but to protect consumers and ensure that the private collection agencies' activities do not interfere with the efforts of government child support enforcement programs.

The proposed section confirms that these agencies are subject to North Dakota law just like collection agencies that collect other debts and must obtain a license from the Department of Financial Institutions. In addition, due to the uniqueness of child support debts and the fact that the child support enforcement program is frequently enforcing the same debt at the same time, some additional provisions are proposed.

In legislative hearings for many years, the child support enforcement program and the Legislative Assembly have discussed that 1) child support payments should first be applied to the amount due in the current month before being applied to any arrears, 2) the right to current child support belongs to the children and cannot be waived or negotiated by the parents, and 3) all child support payments must be paid through the State Disbursement Unit (SDU) for proper recording and disbursement.

As a matter of public policy, attorneys are not allowed to charge contingency fees for the collection of a current monthly child support obligation. This bill would apply that policy consistently to private collection agencies as well. To avoid this public policy and state laws requiring that current child support be paid before arrears, we are aware that some agencies' contracts with families specifically provide that any collections received will first be applied to arrears. This denies children the current support they need and violates the distribution priority established by the Legislature. The bill would make it even more clear that such a practice is prohibited.

The bill would also ensure that all payments are properly processed through the SDU. Right now, we know that many private collection agencies do not inform us of payments that have been received and, as a result, the state's official payment records continue to show the obligor as delinquent even when money has been collected from the obligor or the obligor's employer by the private collection agency. In those cases, either the obligor is denied credit because the payment was not made through the SDU as required by state law and the court order, or else a worker in the SDU has to spend hours to "fix" the payment records to reflect a payment that was received by the private collection agency but not processed through the SDU. This situation can be avoided easily if the private collection agency turns over all collections to the SDU for proper recording and disbursement. If a collection agency does not comply with the new section, the obligor is not entitled to credit for the collection but has a claim against the agency for three times the amount withheld by the agency.

Some private collection agencies regularly ask us to redirect child support disbursements to the agency instead of sending the money directly to the family. Unless this bill is passed, we cannot do that because we know that many standard contracts allow the agency to retain a percentage of a current child support payment. To redirect the disbursement to the agency on behalf of the

family would assist in the distribution of child support that is contrary to state law. If we are able to program our system in the future to disburse payments of current child support to the families and unassigned arrears to a private collection agency, this bill gives the Department discretion to adopt rules allowing for payments to be redirected. This ensures that the children receive the current support they need, that any child support collections on assigned arrears are properly retained by the State rather than paid to the private collection agency, and that the State's payment records are accurate. In the meantime, the private collection agencies are free to collect their fees from the family.

Finally, we are aware that some agencies' standard contracts make it very difficult for a family to terminate its contract with the agency. The bill would protect families by allowing them to terminate an agreement on thirty days' notice without a cancellation fee.

The bill as amended does not limit the contingency fee that a private collection agency may charge for the collection of arrears, nor is the agency prohibited from being paid for work performed up to the date the contract is terminated.

Section Two proposes to make the mailing of notices of arrears or scheduling of contempt hearings optional rather than mandatory for the clerks of court. Under current law, whenever one payment is missed, the clerk is required to mail a notice of arrears or schedule a contempt hearing. The fact that one payment is missed does not necessarily mean an obligor is deliberately violating the court order. For example, an obligor may change jobs and assume that the new employer's payroll cycle will "take care of it," when in fact the payment is not withheld by the employer and paid through the SDU until the next month. Because current law requires the clerk to act even when one payment is missed, a lot of time on the part of judges, clerks, state's attorneys, and parents is spent on contempt hearings that are unnecessary. When hearings for 20 or 30 obligors are scheduled at one time, it is difficult to separate those who are truly in

contempt of court from those who have simply been careless in making sure their payments are made on time. This law will give the clerks of court the discretion to refrain from taking any action unless requested by the family or the child support enforcement program. It is our hope that making contempt proceedings more selective will also make those proceedings more effective.

Section Three amends current law in anticipation of a possible amendment to the federal regulations that define "reasonable cost" for health insurance. Currently, unless insurance coverage is available to the family for no or nominal cost, an obligor is required to carry insurance if insurance is available on a group basis or through the obligor's employer or union even if the coverage costs several hundred dollars per month. If the federal regulation is changed, this amendment will allow the Department of Human Services to establish a different definition by administrative rule rather than wait to implement any new definition until 2007.

Section Four proposes to extend the deadline for bringing contempt of court proceedings against an income payer from one hundred and eighty days to one year. This would give the child support enforcement program more time to complete settlement negotiations with an income payer.

Section Five authorizes the Department to retain any child support collections that we are unable to disburse within three years. Currently, these payments are deposited with the Unclaimed Property Division. At that point, the deposits in IV-D cases are considered by the federal government to be revenue to the State from operation of the child support enforcement program and the federal government wants its share of those deposits from the reimbursement it provides for our program's operations. For example, if a total of \$30,000 in payments in IV-D cases is deposited with the Unclaimed Property Division, there is a \$19,800 deduction from the federal funds received by the Department of Human Services. This provision does not involve a lot of money, and as the fiscal note indicates, the amount that is deposited in this fund would get smaller and smaller now that

we have gone to almost exclusively an electronic payment process. Nevertheless, if the Department is going to incur the cost of these unclaimed payments, we propose that the funds be used for outreach projects, a process Massachusetts enacted with the concurrence of custodial parents, that might not otherwise be a funding priority rather than deposited with the Unclaimed Property Division.

Section Six pertains to arrears management. As a result of legislation that was passed in the last two legislative sessions, the official payment records that we maintain are much more accurate regarding the judgment interest that is owed in each case. Unfortunately, with judgment interest at 12% per year on over \$200 million in child support arrears owed in North Dakota, another \$2 million in interest is added to that balance every month. This makes it even more important that we take a practical and realistic approach to how we manage this arrears balance.

The committee may remember that the Senate has passed Senate Bill 2302, which would change the statewide judgment interest rate from 12% per year to a variable rate that is set on an annual basis at 2% above the prime interest rate, rounded up to the nearest whole number.

Now that our payment records contain more accurate information, the next step is to look at ways to use the accrual of judgment interest as an incentive for obligors to pay their child support arrears. This provision will give the child support enforcement program the ability to initiate an amnesty program and enter into payment plans with obligors that suspend the accrual of judgment interest as long as the obligor makes the payments required in the payment plan. In short, we would have additional ability to work with obligors, if they are willing to work with us.

The second part of Section Six provides guidance on distribution of child support payments when the custodial parent is deceased. Our program has existed for long enough that we are dealing with more parents, both obligors and obligees, who have died. This proposed new subsection would allow the state's payment records to be updated to reflect a new payee without requiring the obligee's family or heirs to go back to court, unless one of the children is a minor.

Sections Seven, Eight, Ten, Eleven, and Thirteen resolve inconsistencies in current law regarding the interaction between the child support enforcement program and public retirement plans. Federal law requires that our program attach "public and private retirement funds" to satisfy a child support obligation. Again, as our program ages, more and more obligors are reaching retirement age and receive retirement benefits instead of other income. The first step in attaching retirement funds is to know who the retirees are. Sections seven, ten, and thirteen amend current law to clarify that public retirement plans, like other government agencies and private retirement plans, should respond to the child support enforcement program's requests for information about retirees. Section eight, as the next step, resolves a conflict in state law and reiterates that public retirement funds may be attached through income withholding or other legal process for collection of child support. Finally, section eleven authorizes the child support enforcement program to issue domestic relations orders (QDROs) to private and public retirement funds. We have worked with the agencies that operate these public retirement plans and understand that they do not object to these provisions.

Section Nine identifies the proper court in which to pursue penalties for failing to report a newly hired employee when none of the employees has a current child support order.

Section Twelve extends the sunset on the current statute allowing the state child support enforcement program to enter into cooperative agreements to be a

service provider to the regional child support enforcement units or an Indian tribe. This section was enacted last session as a way to improve the delivery of child support enforcement services through centralization of functions and also to improve the services provided to tribal children. However, no such agreements have been entered up to this point, which we believe is due in part to the fact that the expiration date on the current statute makes it difficult to plan for the long term. The original bill removed the expiration date; the bill was amended in the House to extend the continuing appropriation for another two years.

Madame Chairman, this concludes my testimony. I would be happy to answer any questions the committee may have.



Attachment 1  
3/14/05

ZUGER KIRMIS & SMITH

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March 9, 2005

**Chairman Lee and  
Members of the Senate Human Services Committee**

Attached please find Supportkids' revised amendments to Reengrossed House Bill No. 1172. I apologize for the oversight on amending the wrong version of the bill.

We again want to thank the Committee for allowing us the opportunity to testify this afternoon. We appreciated the lively and healthy debate on the issue of private child support collection. The result of which was to focus the Committee on the heart of the issue, redirection of support payments. Regarding this issue, the Department has offered no substantive reason for refusing to honor the express intentions of the custodial parent except that they believe it is the best policy for all of the support to go to the parent. That is a flawed argument if, in fact, private agencies are considered an important option for parents, since private agencies are not able to perform this work without charging a fee.

Though the Division is attempting to promote its own policy on this subject, truly it is the North Dakota Legislative Assembly and the Federal Office of Child Support Enforcement that should be determining policy. The Federal Office of Child Support Enforcement, which has studied this issue on a nation-wide scale, has stated "that it is good customer service and good public policy for a state to send child support payments to the custodial parent at the address that he/she requests. No one is in a better position to determine where the custodial parent should receive child support payments than the custodial parent him/herself."

Supportkids and the parents it serves respectfully suggest that this is an appropriate policy for the State of North Dakota. Please feel free to either contact me or Mr. Rosenkoetter if you have any questions. Thank you for your consideration.

Sincerely,

  
Paul Sanderson

**PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1172**

Page 1, line 17, replace “,” with “.” and remove “if the”;

Page 1, remove lines 18 through 20;

Page 1, line 21, replace “.” with “impose a fee or charge for any child support collected primarily through the efforts of a governmental agency.”

Page 1, remove lines 22 through 24;

Page 2, remove lines 1 and 2;

Page 2, line 8, replace “may not” with “shall”;

Page 2, line 9, replace “unless specifically permitted by rules adopted by the department of human” with “upon written request of the obliquee, and the obliquee may revoke the request for redirection of payments at any time.”;

Page 2, remove line 10;

Page 2, line 12, remove “three times”;

Page 2, line 13, remove “or five hundred dollars.”;

Page 2, line 14, remove “whichever is greater.”;

Page 2, line 18, replace “upon thirty days’ notice” with “: a. Within 15 days of signing the contract; b. After twelve consecutive months in which the collection agency fails to make a collection; or c. If the government child support agency begins collecting on behalf of the child support creditor, provided such collections are primarily the result of the government agency’s efforts.”

Renumber accordingly

**PROPOSED TESTIMONY ON HOUSE BILL 1172****Chairperson Lee and  
Members of the Senate Human Services Committee**

My name is Paul Sanderson and I represent Supportkids, Inc., the nation's oldest and largest private child support collection company. On behalf of Supportkids, our existing North Dakota clients and those North Dakotans who might wish to use our child support enforcement services in the future, we urge you and the other members of the Human Services Committee to oppose certain provisions in HB 1172.

The most recent figures indicate there is roughly \$95 billion in unpaid child support in this country, with about \$200 million of that attributable to North Dakota. The fundamental reason Supportkids was founded in 1991 is that it recognized the unfortunate fact that government child support programs will never have the funding necessary to collect all of the child support that is due to parents. Supportkids, Inc. is a private child support enforcement agency that operates in each of the fifty states. We believe that custodial parents deserve to have other options, beyond just the government, when seeking assistance in collecting child support. We have served over 100,000 parents nationwide and have collected in excess of \$200 million on their behalf. This illustrates the fact that private child support enforcement is an important and necessary part of the effort to help families collect the support they are owed. Virtually all of our clients tried collecting through government child support agencies before turning to us.

Unfortunately, we are unable to support Section 1 of HB 1172 for the following reasons:

- 1) Section 1, subsections 2b and 2c, provide there can be no fee assessed for collecting current support for parents. However, collecting current support, as well as past-due support, is exactly why parents hire us and is what they expect us to do. To legislate that we may only charge a fee for the work we put into collecting past-due support but cannot charge a fee for the work we put into collecting current support makes no sense and is unfair to parents who must have help collecting current support. Parents should have the absolute right to hire Supportkids to collect whatever child support is due them, regardless of whether it is designated as past-due or current support. Illinois passed similar legislation last year, and now not a single private agency can afford to offer services to Illinois parents who most need help – those with minor children who are not receiving their current support.
- 2) Section 1, subsection 3, requires that all support collected by private agencies must be sent to and disbursed by the state disbursement unit. We agree with that principle, provided the state disbursement unit honors our clients' requests that the money be disbursed to the private agency so fees can be deducted. The Federal Office of Child Support Enforcement has encouraged state agencies to obey client's requests for re-direction of payments as a matter of good customer service. Unfortunately, North Dakota is one of the few states that refuses to do so and simply ignores direct requests from North Dakota clients. If North Dakota's child support program would offer our clients the courtesy of re-directing

payments at their request (as do almost all states), the North Dakota state child support enforcement program would also be eligible for more federal incentive dollars.

- 3) Section 1, Subsection 5, provides that our clients may cancel their contract at any time, for any reason, without consequence, upon thirty days' notice. This provision is manifestly unjust. As a private enforcement agency, we often invest thousands of dollars into cases in an effort to locate missing parents and getting them to pay. To allow any consumer to enjoy the benefit of a service and then completely avoid any responsibility to pay the fee is unprecedented and unreasonable.
- 4) HB 1172 goes against the spirit of the policy issued by the Federal Office of Child Support Enforcement that encourages states to cooperate with private enforcement agencies that have been hired by custodial parents to help collect child support. Federal policy directives issued in December 2002 and, most recently, in the National Child Support Enforcement Strategic Plan for FY 2005-2009, specifically call for the collaboration between government and private child support enforcement agencies and cooperation in working together in partnership to achieve identified enforcement results throughout the United States.

Legislation similar to HB 1172 was proposed last session in California. As Governor Schwarzenegger stated in his Veto Message on SB339:

**While I support ensuring parents are not taken advantage of in securing child support payments, this bill will have the effect of severely limiting a consumer's choice to go to a private collection agency when government efforts to collect the owed child support falter. . .Private child support collection agencies are valuable participants along with government efforts to collect child support and offer consumers a choice. . . Federal review of the subject, as well as the California Performance Review, have identified the need for private agencies in child support collections."**

HB 1172, in its current form, is harsh and punitive and will only have the effect of eliminating the ability of North Dakota's custodial parents from obtaining private sector enforcement assistance.

We would, of course, be very pleased to work with the sponsors of HB 1172 and the members of the Human Services Committee to develop a bill that protects consumers and yet mutually benefits both the state child support program and private enforcement agencies that are providing and valuable and much needed services.

Respectfully,

Paul Sanderson

**Proposed Amendments to Reengrossed House Bill 1172**  
March 14, 2005

Page 1, line 6, remove "subsection 5 of section 14-09-25,"

Page 3, remove lines 13 through 29

Page 4, line 2, after "program" insert an underscored comma

Page 4, line 3, after "plan" insert an underscored comma

Page 4, line 18, replace "are" with "is"

Renumber accordingly

## **Research Points: HB 1172**

### **Bank Data Match:**

The bank and the data match center can exchange information in two ways.

1. A bank may receive a list and match its customers against it. If a match is found, the bank may then report back to the match center.
2. A bank may send its complete customer list to the match center, including only names and addresses. No account information is exchanged.

### **Section 2—last known address**

ND Rule of Civil Procedure 5(b) covers Service. Under this rule, mailing notice to a last known address is sufficient. Additionally, under 14-09-08.1(2), it is the duty of the party subject to a child support order to provide any current address information or changes, among other things.

### **Page 4, line 4: "Commercially Reasonable"**

Commercially reasonable is a term of art addressed by the UCC. It is basically a fact based test. In a recent ND Supreme Court case, *Oliver-Mercer Electric Cooperative v. Davis*, 2004 ND 86, a "commercially reasonable" sale or action must be reasonable in its method, manner, time, place, and terms. Given the subjectivity of the term, it is the job of the fact finder (jury) to decide whether or not an action is "commercially reasonable." Evidence of whether or not an action was commercially reasonable may include fair market value, which depends on appraisals, stipulations, market conditions, subsequent sales, and testimony of a purchaser.

### **Affected Sections of the NDCC:**

- 15-39.1-30 addresses the Teacher's Retirement Fund and confidentiality of records.
- 28-22-19 addresses civil judicial procedure and its exemptions.
- 35-15-06 addresses miner's liens and foreclosure.
- 50-09-08.5 addresses aid to dependent children.

#### **15-39.1-12.2 Teacher's Retirement**

Benefit payment to alternate payee under domestic relations order

#### **39-03.1-14.2 Highway Patrolmen's Retirement System**

Benefit payment to alternate payee under domestic relations order

#### **54-52-17.6 Public Employees Retirement System**

Benefit payment to alternate payee under domestic relations order

#### **54-52.2-03.3 Deferred Compensation Plan for Public Employees**

Benefit payment to alternate payee under domestic relations order

These sections apply to qualified domestic relations orders for state employees.

Example of language in each statute:

*Arlee*

The board or a vendor contracted for by the board shall apportion a participating member's account in the deferred compensation plan under this chapter in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to the board to determine if the domestic relations order is qualified under this section and pursuant to the plan document established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the participating member. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under this chapter, or to provide increased benefits. A qualified domestic relations order must specify:

- a. The name and the last-known mailing address of the participating member and the name and mailing address of each alternate payee covered by the order;
- b. The amount or percentage of the participating member's benefits to be paid by the plan to each alternate payee;
- c. That the alternate payee must take a lump sum payment of the benefits allocated to the alternate payee within one hundred twenty days of the later of the board's acceptance of the qualified domestic relations order or the entry of the order by the court; and
- d. Each plan to which the order applies.

3/14/05

Lee, Judy E.

From: maryanne\_best@childsupportoptions.org  
Sent: Monday, March 07, 2005 9:26 PM  
To: Lee, Judy E.  
Subject: Opposition to HB 1172

Dear Members of the Senate Committee on Human Services:

On behalf of the members of the National Coalition for Child Support Options (NCCSO), I am writing to urge you to VOTE AGAINST HB 1172!

The NCCSO is a national organization of thousands of custodial parents who are owed child support and who believe parents should have effective options available to them for the collection of child support, including private child support enforcement agencies.

If this bill is allowed to become law, it will TAKE AWAY RIGHTS of custodial parents in North Dakota who need help from private child support enforcement agencies.

The sponsors of HB 1172 will claim that they are really "helping" custodial parents by imposing stiff controls on private child support enforcement agencies. However, NCCSO IS NOT AWARE OF A SINGLE COMPLAINT IN THE STATE OF NORTH DAKOTA REGARDING PRIVATE CHILD SUPPORT COLLECTION AGENCIES.

Unfortunately, the provisions in Section 1 of HB1172 are so harsh and extreme that private child support agencies will no longer be able to offer services to families in North Dakota.

It is amazing to our organization that, with \$152 million in uncollected child support owed in North Dakota, the government child support agency is seeking to eliminate the only alternative to their own services---that offered by private agencies.

There are 16,716 open child support cases in North Dakota on which not a single penny is collected!

With this record, it is clear that the North Dakota child support agency cannot collect support for everyone who needs it. This is why many custodial parents are choosing to hire private child support enforcements agencies and collectors. Parents owed child support must continue to have this option and that is why HB 1172 should not be voted out of committee without Section 1 being removed.

The NCCSO believes that North Dakota's custodial parents who are owed child support NEED MORE OPTIONS, not fewer. We urge you to please VOTE "NO" ON HB 1172.

If you would like to know more about our concerns with HB1172 and how it hurts our families, please feel free to contact me.

Mary Anne Best  
NCCSO National Coordinator



3/14/05

**Lee, Judy E.**

**From:** David Conder [david@childsupportrecovery.com]  
**Sent:** Tuesday, March 08, 2005 7:04 AM  
**To:** Lee, Judy E.  
**Subject:** HB 1172

March 8, 2005

Members of the Senate Human Services Committee:

I am writing on behalf of the Child Support Enforcement Council ("CSEC") to express our association's opposition to Section 1 of HB 1172.

As background, the Child Support Enforcement Council is a professional association of the leading providers of private child support enforcement services in the United States. Our members are responsible for an estimated \$250 million in child support collections (representing about 95 percent of all collections made by private agencies) for custodial parents who hire our agencies. CSEC has been working closely with the Federal Office of Child Support Enforcement to promote a better understanding of the important role of private agencies in helping to solve the national epidemic of unpaid child support, which currently totals almost \$100 billion. In fact, encouraging cooperation by state child support enforcement agencies with private child support collections agencies is part of the National Child Support Enforcement Strategic Plan recently adopted by the Federal Office of Child Support Enforcement.

In recent years private child support enforcement agencies have become a growing option for custodial parents who, for whatever reason, cannot get their child support collected by their state child support program. As in all the states, North Dakota has a significant number of parents who cannot be effectively assisted by the state program.

CSEC supports reasonable regulation of private child support enforcement agencies. However, CSEC opposes legislation that has the effect of restricting parents' rights to collect support using a private child support agency. If HB 1172 is passed with Section 1 as it is presently written, your constituents will not have the option of hiring private agencies to collect their support. If that happens, where else will they be able to get help?

The following provisions in Section 1 of HB 1172 are opposed by CSEC:

- **The prohibition against collecting current support suggests the Division does not think parents are smart enough to decide what is in their child's best interest. If the state is not able to collect the current support, who are they to limit a parent's other enforcement options?**
- **The unilateral contract termination provision will allow parents to receive the benefit of services from private agencies, while avoiding responsibility for paying any fees. In what other business relationship is a unilateral termination of a contract, without cause, permitted? If this provision is enacted, it will establish an extremely bad precedence for business in North Dakota.**
- **Federal policy recommends state child support agencies send payments to any address specified by a parent, including that of a private agency.**

3/8/2005

CSEC agrees, however, that fees should never be taken on collections achieved by the state child support program and we also agree that payments should be processed through the state disbursement unit, so long as the state agency will allow the payments to be re-directed to private agencies for deduction of fees if so requested by a custodial parent. CSEC supports an amendment that would retain these provisions.

I welcome the opportunity to discuss these issues with you at your convenience, and will provide any additional information that may be helpful to you in understanding our concerns with HB 1172.

Sincerely,

David Conder  
President, Child Support Enforcement Council  
P.O. Box 547  
Elkhart, IN 46517  
(866) 357-2732  
[www.csecouncil.org](http://www.csecouncil.org)

3/8/2005

## PROPOSED AMENDMENTS TO

Page ##, after line ##, insert the following:

**"SECTION 1.** Two new subsections to section 14-09-09.10 of the North Dakota Century Code are created and enacted as follows:

"Arrears registry" means the registry maintained under section 6 of this Act."

"Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. "Monthly support obligation" is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.

**SECTION 2.** Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

1. Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is not current in a court established plan to repay the unpaid child support judgment is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may ~~omit~~ be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 that has been certified under section 14-08.1-08.
  - a. The seal of the court;
  - b. The subscription of the clerk of that court;
  - c. The attestation in the name of the judge of the court that entered the judgment;

- d- A statement of the courts and counties to which the judgment has been transcribed; and
- e- If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county.

**SECTION 3. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-02. Lien for past-due child support.** When a past due child support obligation is at least six times the monthly child support obligation and the an obligor is not current in a court established plan to repay the past due support listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. The amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

**SECTION 4. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-09. Immunity from liability.** A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property or discharges the obligation to the public authority, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, is immune from suit or any liability to the obligor or other person arising from the surrender or payment under any federal or state law. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.

**SECTION 5.** A new section to chapter 35-34 of the North Dakota Century Code is created and enacted as follows:

**Effect of liens.** Except as otherwise provided in this section, a lien perfected under this chapter encumbers the property and requires the person in possession of the property to retain the property until the lien is satisfied or released by the public authority. The property may be transferred if necessary to satisfy a right of setoff under section 35-34-05 or to honor a lien with higher priority under section 35-34-07.

**SECTION 6.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Child support arrears registry.** The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support

obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrears registry" means the registry maintained under this section.

**SECTION 7. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
  - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
  - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less listed on the arrears registry; or
  - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.

**SECTION 8. AMENDMENT.** Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who owes past due child support in an amount greater than twenty five thousand dollars is listed on the arrears registry, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person.

Renumber accordingly

## SUMMARY OF PROPOSED AMENDMENTS

### Section One

- Creates a definition of "arrears registry" to implement the other amendments
- Creates a definition of "monthly support obligation." This definition is needed to ensure all appropriate cases with arrears are subject to income withholding, credit bureau reporting, liens, and seizure. If the arrears have been ordered as one lump sum, we cannot issue an income withholding order because the amount due under section 14-09-09.30 currently needs to be based on the current or most recent monthly support obligation. Credit bureau reporting in

chapter 50-09 has the same problem because we need to identify how many months the obligor is behind.

Administrative liens (section 35-34-02) and seizures (28-21-05.2) can only be used when the amount of arrears is "at least six times the monthly child support obligation." For lump-sum cases and those that are "arrears only," there is no monthly support obligation and these tools cannot be used.

Without this language, we will continue to miss out on potential arrears collections in these cases; in most of them, there will probably be no collection at all and the federal performance measures will be adversely impacted.

## Section Two

- Applies the arrears registry concept to administrative executions and authorizes the Department to participate in a federal process that may be created in the coming months.
- Allows executions to be issued with the payment ledger attached rather than sending the ledger to the clerk for docketing before the writ is issued.

## Section Three

- Applies the arrears registry concept to child support liens.
- When a third party contacts the child support agency to know how much of the property is subject to the lien, the lien will include all arrears owed on that date.

## Section Four

- Clarifies the existing immunity for third parties who honor our liens or similar liens from other state child support enforcement agencies.

## Section Five

- Clarifies that the effect of a lien is to prohibit subsequent transfers of the property. This is a problem with current law and the change is needed to ensure federal requirements are fulfilled. The federal office of child support enforcement describes the mandated process as "freeze and seize." The asset is frozen through a lien and if that does not result in cooperation, the asset is seized. Unfortunately, current North Dakota law is unclear whether a lien "freezes" the asset. As a result, in many cases, the person holding the asset for an obligor does not freeze the asset and the notice of lien provided to the obligor is actually a warning to reclaim and dispose of the asset before the lien can be enforced.

The new language clarifies the original intent of the Department in the 1997 welfare reform legislation that a lien "freezes" the asset unless there is already a lien in place with a higher priority. Without this language, we will be left with the

choice of wasting time issuing ineffective liens or immediately seizing the property without giving the obligor a chance to voluntarily cooperate.

#### Section Six

- Provides that an arrears registry is created of all obligors who owe at least two months' of arrears or \$2,000, whichever is greater. This concept will allow the child support enforcement program to get involved sooner before an obligor gets too far behind and can't catch up. It also provides a consistent trigger for arrears collection tools. According to the federal office of child support enforcement, the best way to manage arrears is to avoid them in the first place by responding quickly when orders are set too high or when current support is not paid.

#### Section Seven

- Applies the arrears registry concept to license suspension.
- Allows the child support enforcement program to use one payment plan for license suspension, interest amnesty, and other collection activities.

#### Section Eight

- Applies the arrears registry concept to public disclosure

PROPOSED AMENDMENTS TO

Page ##, after line ##, insert the following:

**SECTION A.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support deduction order.

1. The state agency, directly or through agents or child support agencies, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.
2. The state agency, directly or through agents or child support agencies, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.
4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.
5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with the order.
6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the



amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.

7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section."

**SECTION B.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Protest period.** Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 or section A of this Act and may not consider the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later.

Renumber accordingly

## SUMMARY OF PROPOSED AMENDMENTS

### Section A

- Creates a process similar to income withholding and writs of execution for property in the hands of third parties (i.e. a payer of a lump-sum or a financial institution) without requiring the involvement of the clerk of court to docket the arrears or the sheriff to personally serve the order.
- When the order is served on the payer, a copy is also provided to the obligor.
- The child support enforcement program is required to provide notice to the obligor of the right to claim exemptions and the right of the obligor or any other aggrieved person (such as a joint owner) to a court hearing within 30 days.

### Section B

- The child support enforcement program is prohibited from distributing the money collected under an administrative execution or deduction order until the obligor has had an opportunity to have the action reviewed by a court.

PROPOSED AMENDMENTS TO HOUSE BILL 1172

Page ##, after line ##, insert the following:

**"SECTION 1.** Two new subsections to section 14-09-09.10 of the North Dakota Century Code are created and enacted as follows:

"Arrears registry" means the registry maintained under section 6 of this Act."

"Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. "Monthly support obligation" is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.

**SECTION 2.** Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

1. Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is ~~not~~ current in a court established plan to repay the unpaid child support ~~judgment~~ is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may ~~omit~~ be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 that has been certified under section 14-08.1-08.
  - a. The seal of the court;
  - b. The subscription of the clerk of that court;
  - c. The attestation in the name of the judge of the court that entered the judgment;

- d- A statement of the courts and counties to which the judgment has been transcribed; and
- e- If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county.

**SECTION 3. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-02. Lien for past-due child support.** When a past due child support obligation is at least six times the monthly child support obligation and the an obligor is not current in a court established plan to repay the past due support listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. The amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

**SECTION 4. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-09. Immunity from liability.** A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property or discharges the obligation to the public authority, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, is immune from suit or any liability to the obligor or other person arising from the surrender or payment under any federal or state law. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.

**SECTION 5.** A new section to chapter 35-34 of the North Dakota Century Code is created and enacted as follows:

**Effect of liens.** Except as otherwise provided in this section, a lien perfected under this chapter encumbers the property and requires the person in possession of the property to retain the property until the lien is satisfied or released by the public authority. The property may be transferred if necessary to satisfy a right of setoff under section 35-34-05 or to honor a lien with higher priority under section 35-34-07.

**SECTION 6.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Child support arrears registry.** The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support

obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrear registry" means the registry maintained under this section.

**SECTION 7. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
  - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
  - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less listed on the arrears registry; or
  - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.

**SECTION 8. AMENDMENT.** Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than twenty five ten thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person.

Renumber accordingly

## SUMMARY OF PROPOSED AMENDMENTS

### Section One

- Creates a definition of "arrear registry" to implement the other amendments
- Creates a definition of "monthly support obligation." This definition is needed to ensure all appropriate cases with arrears are subject to income withholding, credit bureau reporting, liens, and seizure. Under current law, if the arrears have been ordered as one lump sum, we cannot issue an income withholding order because the amount due under section 14-09-09.30 currently needs to be based on the current or most recent monthly support obligation. Credit bureau reporting

in chapter 50-09 has the same problem because we need to identify how many months the obligor is behind.

Under current law, administrative liens (section 35-34-02) and seizures (28-21-05.2) can only be used when the amount of arrears is "at least six times the monthly child support obligation." For lump-sum cases and those that are "arrears only," there is no monthly support obligation and these tools cannot be used.

Without this language, we will continue to miss out on potential arrears collections in these cases; in most of them, there will probably be no collection at all and the federal performance measures will be adversely impacted.

## Section Two

- Applies the arrears registry concept to administrative executions and authorizes the Department to participate in a federal process that may be created in the coming months.
- Allows executions to be issued with the payment ledger attached rather than sending the ledger to the clerk for docketing before the writ is issued.

## Section Three

- Applies the arrears registry concept to child support liens.
- When a third party contacts the child support agency to know how much of the property is subject to the lien, the lien will include all arrears owed on that date.

## Section Four

- Clarifies the existing immunity for third parties who honor our liens or similar liens from other state child support enforcement agencies.

## Section Five

- Clarifies that the effect of a lien is to prohibit subsequent transfers of the property. This is a problem with current law and the change is needed to ensure federal requirements are fulfilled. The federal office of child support enforcement describes the mandated process as "freeze and seize." The asset is frozen through a lien and if that does not result in cooperation, the asset is seized. Unfortunately, current North Dakota law is unclear whether a lien "freezes" the asset. As a result, in many cases, the person holding the asset for an obligor does not freeze the asset and the notice of lien provided to the obligor is actually a warning to reclaim and dispose of the asset before the lien can be enforced.

The new language clarifies the original intent of the Department in the 1997 welfare reform legislation that a lien "freezes" the asset unless there is already a

lien in place with a higher priority. Without this language, we will be left with the choice of wasting time issuing ineffective liens or immediately seizing the property without giving the obligor a chance to voluntarily cooperate.

#### Section Six

- Provides that an arrears registry is created of all obligors who owe at least two months' of arrears or \$2,000, whichever is greater. This concept will allow the child support enforcement program to get involved sooner before an obligor gets too far behind and can't catch up. It also provides a consistent trigger for arrears collection tools. According to the federal office of child support enforcement, the best way to manage arrears is to avoid them in the first place by responding quickly when orders are set too high or when current support is not paid.

#### Section Seven

- Applies the arrears registry concept to license suspension.
- Allows the child support enforcement program to use one payment plan for license suspension, interest amnesty, and other collection activities.

#### Section Eight

- Applies the arrears registry concept to public disclosure but requires a higher level of arrearage before public disclosure is authorized.

2A Replace #2

Prepared by the North Dakota  
Department of Human Services  
April 7, 2005

## PROPOSED AMENDMENTS TO HOUSE BILL 1172

Page ##, after line ##, insert the following:

**"SECTION 1.** Two new subsections to section 14-09-09.10 of the North Dakota Century Code are created and enacted as follows:

"Arrears registry" means the registry maintained under section 6 of this Act."

"Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. "Monthly support obligation" is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.

**SECTION 2.** Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

1. Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is not current in a court established plan to repay the unpaid child support judgment is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may ~~omit~~ be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 that has been certified under section 14-08.1-08.
  - a. The seal of the court;
  - b. The subscription of the clerk of that court;
  - c. The attestation in the name of the judge of the court that entered the judgment;

- d. A statement of the courts and counties to which the judgment has been transcribed; and
- e. If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county.

**SECTION 3. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-02. Lien for past-due child support.** When a past due child support obligation is at least six times the monthly child support obligation and the an obligor is not current in a court established plan to repay the past due support listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. The amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

**SECTION 4. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

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**SECTION 5.** A new section to chapter 35-34 of the North Dakota Century Code is created and enacted as follows:

**Effect of liens.** Except as otherwise provided in this section, a lien perfected under this chapter encumbers the property and requires the person in possession of the property to retain the property until the lien is satisfied or released by the public authority. The property may be transferred if necessary to satisfy a right of setoff under section 35-34-05 or to honor a lien with higher priority under section 35-34-07.

**SECTION 6.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

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obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrear registry" means the registry maintained under this section.

**SECTION 7. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

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1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than twenty five ten thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person.

Renumber accordingly

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### Section One

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- Creates a definition of "monthly support obligation." This definition is needed to ensure all appropriate cases with arrears are subject to income withholding, credit bureau reporting, liens, and seizure. Under current law, if the arrears have been ordered as one lump sum, we cannot issue an income withholding order because the amount due under section 14-09-09.30 currently needs to be based on the current or most recent monthly support obligation. Credit bureau reporting

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#### Section Seven

- Applies the arrears registry concept to license suspension.
- Allows the child support enforcement program to use one payment plan for license suspension, interest amnesty, and other collection activities.

#### Section Eight

- Applies the arrears registry concept to public disclosure but requires a higher level of arrearage before public disclosure is authorized.

April 7, 2005

VERSION 2B

PROPOSED AMENDMENTS TO HOUSE BILL 1172

Page ##, after line ##, insert the following:

**"SECTION 1.** Two new subsections to section 14-09-09.10 of the North Dakota Century Code are created and enacted as follows:

"Arrears registry" means the registry maintained under section 6 of this Act."

"Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. "Monthly support obligation" is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.

**SECTION 2.** Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

1. Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is ~~not~~ current in a court established plan to repay the unpaid child support judgment is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may ~~omit~~ be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 that has been certified under section 14-08.1-08.
  - a. The seal of the court;
  - b. The subscription of the clerk of that court;

- e- The attestation in the name of the judge of the court that entered the judgment;
- d- A statement of the courts and counties to which the judgment has been transcribed; and
- e- If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county.

**SECTION 3. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-02. Lien for past-due child support.** When a past-due child support obligation is at least six times the monthly child support obligation and the an obligor is not current in a court-established plan to repay the past due support listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

**SECTION 4. AMENDMENT.** Section 35-34-05 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-05. Account lien.**

1. In the case of an account maintained in a financial institution, the public authority may establish a lien on the account by serving a notice of lien upon the financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the financial institution. The notice must be in a form prescribed by the public authority and contain the name, social security number, or other taxpayer identification number and last-known address of the obligor, the amount of past-due support for which a lien is claimed, and any other information required by the public authority. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon service of the notice of lien on a financial institution in accordance with this section, the lien attaches to accounts of the obligor maintained in the financial institution, except to the extent necessary to and freezes all subsequent withdrawals from the account except for funds in excess of the amount of past-due support for which a lien is claimed under this section and as provided in subsection 3.
3. Notwithstanding a freeze on an account under subsection 2, the financial institution may satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with notice of lien, or other obligations of

- the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with notice of lien.
- 3- 4. A lien under this section is perfected when the financial institution is served with notice of the lien.

**SECTION 5. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-09. Immunity from liability.** A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property or discharges the obligation to the public authority, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, is immune from suit or any liability to the obligor or other person arising from the surrender or payment under any federal or state law. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.

**SECTION 6.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Child support arrears registry.** The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrears registry" means the registry maintained under this section.

**SECTION 7. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
  - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
  - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less listed on the arrears registry; or
  - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.

**SECTION 8. AMENDMENT.** Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than twenty five ten thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person.

Renumber accordingly

## SUMMARY OF PROPOSED AMENDMENTS

### Section One

- Creates a definition of "arrears registry" to implement the other amendments
- Creates a definition of "monthly support obligation." This definition is needed to ensure all appropriate cases with arrears are subject to income withholding, credit bureau reporting, liens, and seizure. Under current law, if the arrears have been ordered as one lump sum, we cannot issue an income withholding order because the amount due under section 14-09-09.30 currently needs to be based on the current or most recent monthly support obligation. Credit bureau reporting in chapter 50-09 has the same problem because we need to identify how many months the obligor is behind.

Under current law, administrative liens (section 35-34-02) and seizures (28-21-05.2) can only be used when the amount of arrears is "at least six times the monthly child support obligation." For lump-sum cases and those that are "arrears only," there is no monthly support obligation and these tools cannot be used.

Without this language, we will continue to miss out on potential arrears collections in these cases; in most of them, there will probably be no collection at all and the federal performance measures will be adversely impacted.

### Section Two

- Applies the arrears registry concept to administrative executions and authorizes the Department to participate in a federal process that may be created in the coming months.
- Allows executions to be issued with the payment ledger attached rather than sending the ledger to the clerk for docketing before the writ is issued.

### Section Three

- Applies the arrears registry concept to child support liens.
- When a third party contacts the child support agency to know how much of the property is subject to the lien, the lien will include all arrears owed on that date (except for account liens, which are limited to the amount specified in the notice of lien).

#### Section Four

- Allows a financial institution to choose to receive lien documents through a more convenient means than certified mail or personal service.
- Clarifies that the effect of an account lien is to prohibit subsequent transfers of the property. This is a problem with current law and the change is needed to ensure federal requirements are fulfilled. The federal office of child support enforcement describes the mandated process as "freeze and seize." The asset is frozen through a lien and if that does not result in cooperation, the asset is seized. Unfortunately, current North Dakota law is unclear whether a lien "freezes" the asset. As a result, in many cases, the person holding the asset for an obligor does not freeze the asset and the notice of lien provided to the obligor is actually a warning to reclaim and dispose of the asset before the lien can be enforced.

The new language clarifies the original intent of the Department in the 1997 welfare reform legislation that a lien "freezes" the asset unless there is already a lien in place with a higher priority. Without this language, we will be left with the choice of wasting time issuing ineffective liens or immediately seizing the property without giving the obligor a chance to voluntarily cooperate.

#### Section Five

- Clarifies the existing immunity for third parties who honor our liens or similar liens from other state child support enforcement agencies.

#### Section Six

- Provides that an arrears registry is created of all obligors who owe at least two months' of arrears or \$2,000, whichever is greater. This concept will allow the child support enforcement program to get involved sooner before an obligor gets too far behind and can't catch up. It also provides a consistent trigger for arrears collection tools. According to the federal office of child support enforcement, the best way to manage arrears is to avoid them in the first place by responding quickly when orders are set too high or when current support is not paid.

#### Section Seven

- Applies the arrears registry concept to license suspension.



- Allows the child support enforcement program to use one payment plan for license suspension, interest amnesty, and other collection activities.

#### Section Eight

- Applies the arrears registry concept to public disclosure but requires a higher level of arrearage before public disclosure is authorized.

PROPOSED AMENDMENTS TO HB 1172

Page ##, after line ##, insert the following:

**"SECTION A.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support deduction order.

1. The state agency, directly or through agents or child support agencies, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.
2. The state agency, directly or through agents or child support agencies, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.
4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.
5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with the order.
6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the

amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.

7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section."

Renumber accordingly

## SUMMARY OF PROPOSED AMENDMENTS

### Section A

- Creates a process similar to income withholding and writs of execution for property in the hands of third parties (i.e. a payer of a lump-sum or a financial institution) without requiring the involvement of the clerk of court to docket the arrears or the sheriff to personally serve the order.
- When the order is served on the payer, a copy is also provided to the obligor.
- The child support enforcement program is required to provide notice to the obligor of the right to claim exemptions and the right of the obligor or any other aggrieved person (such as a joint owner) to a court hearing within 30 days.

## PROPOSED AMENDMENTS TO HB 1172

Page ##, after line ##, insert the following:

**"SECTION B.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Protest period.** Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 or section A of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency."

Renumber accordingly

## SUMMARY OF PROPOSED AMENDMENTS

### Section B

- The child support enforcement program is prohibited from distributing the money collected under an administrative execution or deduction order until the obligor has had an opportunity to have the action reviewed by a court. Judgment interest no longer accrues after the payment is received, even though the payment is held and not immediately disbursed.