

2009 HOUSE HUMAN SERVICES

HB 1175

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1175

House Human Services Committee

Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 8062

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz opened the hearing on HB 1175.

James Fleming, Deputy Director and Chief Legal Council of Child Support for the DHS:

See attached Testimony #1.

Chairman Weisz: On page 9, lines 3-6 of the bill, you can demand information from me or anybody else based on what, just your idea that I might know something? Seems broad to me.

James Fleming: It is broad. The subpoena power is a very formal process that we want to move away from. At least in initial request if we have an entity willing to participate, we would like the law to back it up and not having us go through issuing a subpoena. This would allow a third party to honor our request without a subpoena.

Chairman Weisz: They can't enjoy the protections of the law if they volunteer?

James Fleming: We would be nervous about that without having a law to back it up, so yes.

Chairman Weisz: If they don't want to cooperate, you can still force them without going through formal process. Correct?

James Fleming: As an action taken by child support under Chapter 5008.(inaudible). There is a protest (inaudible) to the clause, 500914.

Rep. Nathe: Section 12 lines 26 and 27, you are asking for social security numbers and other relevant information from facilities, phone companies, etc. What is the definition of relevant? Seems to me your asking for their customer list. I'd be concerned on my end if I doled that out.

James Fleming: In concern on how open ended that language was, there are amendments proposed to that section. Amendment is on page 3 of the amendments. Line 26 of bill with amendments, that language would say, names, addresses, social security numbers and other requested relevant income or asset information. Those amendments insert a requirement. We have to ask for it and it has to be relevant to income or asset data.

Rep. Nathe: Walk through this with me as I am fairly new here. What cost of income and asset could public utilities or cell phone companies give you.

James Fleming: Public utilities periodically distribute dividends and we can intercept dividends from some of the utilities we've done matches with.

Rep. Conrad: Would you look for addresses from Cell companies?

James Fleming: Yes.

Rep. Hofstad: You talked about exchange of records. Makes me nervous. What safeguards do you have against identity theft?

James Fleming: Many different approaches to identity theft. We get rid of data when we get information we need. Our data behind our mainframe has a firewall. We can back track to see who has seen what screen.

Rep. Hofstad: More concerned with exchange the other way around.

James Fleming: We prefer to do match on our own. Would have a written agreement and penalties with anyone we give out our data to.

Rep. Damschen: Do you give list of names or just information on a specific person?

James Fleming: We do most of our data matches on a batch basis, no one on one.

Rep. Frantsvog: Page 2 of your testimony, you say for comparison at the end of the fiscal year, we had only 89 children in caseload needing paternity to be established out of 24,269. What does that 24,269 represent?

James Fleming: That represents all of the children who are born out of wedlock on our current caseload.

Rep. Frantsvog: Oldest age of person we have on file out of that 24,269?

James Fleming: I don't know that. We do have social security recipients in that file.

Rep. Holman: On the cell phones, would you put GPS locations (inaudible) your people?

James Fleming: If that were legal to do we would explore that option.

Chairman Weisz: Can you explain your amendment where you are adding the language of paragraph 1 and 2.

James Fleming: Mr. Chairman, we have existing batch processes under current law for other government agencies in paragraph 1 or public utilities and financial institutions in paragraph 2. With health insurers in 500937 (inaudible) with insurance companies under Section 8, we don't want those entities matching with us under those provisions. We are trying to indicate that lines 3-6 as amended apply only to those persons who are not already in the not already in those match provisions.

Rep. Nathe had a question about protesting or the request for access. That is an action we would take under Chapter 5009 of the code and in 500914, it says any person agreed by our action under 5009 can go to court and protest it. So there is a judicial (inaudible) or activity (inaudible).

Rep. Nathe: Are they then notified that you have requested this information?

James Fleming: Actually the person I was referring to, was the company itself.

Rep. Nathe: If the person you are requesting information on, are they notified?

James Fleming: No, they aren't, but we can't find them.

Rep. Nathe: But, you'd have their addresses.

James Fleming: After we succeed in getting their address, they will know that we found them.

OPPOSITION:

Pat Ward representing the Association of ND Insurers and Property Casualty Insurance:

Testified in opposition. **See Testimony #2**

Chairman Weisz: You indicated State Farm is doing this voluntarily, but what happens when they want a settlement right now. If you were on the courthouse steps and they said they wanted the check today. How does that affect (inaudible).

Pat Ward: I'm not sure exactly how we would do that, but I think that what we'd do, when they start handling the claim, they will write (inaudible) in their system as soon as they find out there is a claim. I could find out.

Chairman Weisz: Might be helpful. If you could.

Daniel Kuntz, MDU Resources Group, Inc.: **See attachment #3.** Not unsympathetic with they are trying to accomplish with this bill. Our concern is with Section 12 that deals with directors of utility companies. The 3 pages from the federal law that this law is intended to implement. I've highlighted for you on page 2 and 3 and go into the third page and you will see the requirements the federal government has said the agencies should have in order to implement this federal law. At top of page, you can see requirements that it be obtained by a subpoena. Second and middle part on D to obtain access, safeguards of privacy and information security and subject to non-liability. Those are now in the proposed amendments. But, if you go to the bottom there, it talks specifically about the information from certain records, names and addresses of individuals. There is nothing in there about social security numbers or other relevant information the agency may have determined. That is one of our primary concerns about this bill. It is much broader than what the covered law would provide for. We are willing to match a name and social security if provided to us. Not willing to give out our data base. I have handed out proposed amendments to you. (Went through amendments.)

Rep. Conrad: With each name do you need a subpoena.

Daniel Kuntz: If the subpoena could provide more than one person, the federal law requires a subpoena so we know it is coming from an authorized person.

Rep. Conrad: If once a month they provide you with a list with an administrative subpoena, you would put that against your list, is that going to be sufficient for you?

Daniel Kuntz: We've offered to do the agreement part of that Section K (inaudible) if they want to give us names, we will run that match through our administrative subpoena as a voluntary effort.

Where we could control how often it was going to be done what information we were going to provide and so forth.

Rep. Porter: Looking at the amendments, your proposal (inaudible) in line with how the federal law has been (inaudible).

Daniel Kuntz: That's correct.

Rep. Porter: The voluntary agreement doesn't currently exist out there so there isn't an exchange of data between MDU and the child support unit at the present time?

Daniel Kuntz: There is no provision under current law for a voluntary agreement. We've never received a subpoena from the agency. Likelihood extremely slim you'd find people on our records if you can't find them in other records like drivers licenses.

Rep. Porter: Do I give my social security number if I apply for utility services?

Daniel Kuntz: We don't have social security numbers for all of our customers.

Steve Splide, Chief Executive Officer, ND Insurance Reserve Fund: See Testimony # 4.

Rep. Porter: Only concern I have is with the interim process back in front of a legislative committee, isn't necessarily going to yield a solution to the problem. Is there another process the industries and the dept. can do over that time frame without making it a study that would bring us back better results

(inaudible).

Steve Splide: We would be willing to participate (Inaudible) in whatever's in the process initiated by child support enforcement program.

Todd Kranda from Kelsch Law Firm: here appearing for the (inaudible) Verizon Wireless. Neither of the entities are opposed what child support is attempting to do (inaudible) couple of sections. Verizon Wireless has concern with Section 12. Proposed amendments would take care of it. You should have received an e-mail from the QWEST lobbyists, with similar concerns. What I'd like to bring to your attention is, look at page 11, line 22, speaking on behalf of the charitable gaming association who is a client of mine, there is a 24 hour period in which there has to be a remittance. I think that is awfully short. Gaming operators would like a longer period of time. I don't know what would be reasonable, I'll leave it to the committee's suggestion for a longer period for them to turn around.

Chairman Weisz closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1175

House Human Services Committee

Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 8063

Committee Clerk Signature

Ticky Crabtree

Minutes:

Chairman Weisz: Mike Schwindt is here to give a brief overview of the child support unit.

Mike Schwindt, Director of Child Support Enforcement: We get our charter and most of our money from the federal government. ND court orders everything and we can't do anything without a court order. We charge \$25 for non-assistance cases. We have a 60,000 kids on our caseload. We cannot do our job without cooperation of business. The businesses will deduct wages in the amount of child support obligation and send into us. Interception of federal and state income tax is done on child support arrearages. Ninety percent of what comes into us, goes out in two days or less to the families. Another 5% we collect is sent onto another state. The balance we collect is used for (inaudible) tax payers for assistance that may have been provided in the past. All tools we are talking about for improving our collections to help us in an orderly and effective transfer of resources (inaudible). The amount being withheld for child support is governed by the guidelines put in place for years. Interest is tacked onto arrearages of 12%. Our job is to provide customer service.

Chairman Weisz: Explain what you do with child support payment when money goes to your department.

Mike Schwindt: Money comes in and goes through state's distribution formula (inaudible).

Rep. Kilichowski: The 5% you hold, how much of that the money goes back to Medicaid and TANF?

Mike Schwandt: \$7.5 million (inaudible).

Rep. Conklin: (Inaudible).

Mike Schwandt: If I own and pay money, I don't have the right to know if my ex-spouse is on Medicaid or TANF.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1175

House Human Services Committee

Check here for Conference Committee

Hearing Date: February 16, 2009

Recorder Job Number: 9558

Committee Clerk Signature

Vicky Crestree

Minutes:

Chairman Weisz: Committee, because of unusual scheduling problems, we are postponing our committee work today. We will meet tomorrow at 11:00 a.m., so Political Subdivisions can meet this afternoon. Meeting adjourned.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1175

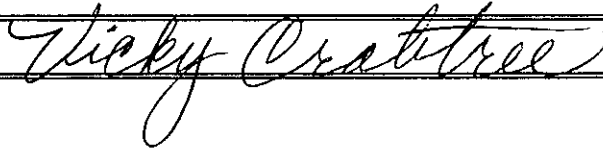
House Human Services Committee

Check here for Conference Committee

Hearing Date: February 17, 2009

Recorder Job Number: 9636

Committee Clerk Signature



Minutes:

Rep. Weisz: Let's take up 1175. Students here today from Rep. Holman's hometown.

We have both supportive and opposing sides.

Rep. Porter: Section 8 area concern for me. I'd like to ask Mr. Ward a question. What

happens if Section 8 goes away, how would industry going to handle the request? Or if the industry would rather that it spelled out in the proposed amendments.

Pat Ward: The industry would rather see Section 8 stripped from the bill. We have time for working on amendments for the next session. I offered during my testimony an amendment to strip Section 8 and made it a study. I have attempted to work with the department on coming up with some amendments that would be more acceptable to the industry and provided those to Chairman Weisz. Our preference is to still take it out. Just got last version of amendments from the department which was a response to the ones I provided to Chairman Weisz.

Rep. Porter: I have the same question for Mr. Kuntz on Section 12.

Rep. Weisz: For the students that are here, we are not hearing a bill. We are having discussion on a child support exchanging information bill.

Mr. Kuntz: Your question is?

Rep. Porter: Your concerns inside of section 12. From an industry standpoint, does this take care of your concerns or would it work better the way it currently is and not having anything in this particular bill or are you comfortable what you have provided us with amendments in Section 12 with working with the department?

Mr. Kuntz: The amendments we presented to you, we would be comfortable with. The department wants to take another step to go beyond what the federal mandates to allow them to get additional information and that's where we have our concerns.

Rep. Conrad: Did you see the department's amendments?

Mr. Kuntz: Not recently.

Rep. Conrad: I have a question for Mr. Fleming or Mike Schwindt? (Inaudible)

James Fleming: We have been working with them. We have the good exchange most of the time. We are trying to accommodate what both sides want and what we think legislators want and try to work towards a compromise. Certainly the perception of the insurance match at this point there are a lot of new things and unknowns. The insurance matches are not that complicated. You have insurance companies around the country participating on a voluntary basis without a hoopla about it.

Rep. Conrad: Have you got some amendments that you have come to some agreement with?

James Fleming: We looked at Mr. Ward's amendments and are a lot alike language from Kansas. Tried to take Mr. Ward's proposals and put with language in ND law. Mr. Ward's amendment and what the department has got is whether there should be a 10 day time frame (inaudible). Mr. Ward's amendments would say, the (inaudible) must report the claim as soon as reasonably possible. Without a deadline, that's going to be (inaudible) anyway. You can't (inaudible) a claim until you get one. If we get a notice of a claim on a one day's notice, that's not enough time for us to review a case and to see if the settlement would be appropriate.

Match doesn't do that much good if you don't have enough time to act on the match information before the (inaudible). We have a philosophical disagreement whether there should be a penalty for not matching similar to what we have with employers today. Employer today, has a court order and doesn't honor it, is liable for the money he should have withheld.

Rep. Frantsvog: Who did you discuss your amendments with any of the other parties?

James Fleming: We have not done that at this time.

Rep. Weisz: Jim, do you have copies for everyone?

James Fleming: Yes, I do.

Rep. Weisz: Would you hand them out now?

James Fleming: I'd like to talk about Mr. Kuntz's amendments. We really narrowed down to where we have a difference of substance and difference of procedure. The department would prefer to be able to do data with cooperative entities (inaudible) subpoenas. Subpoenas generally things that say you must do this. If a company willing to work with us, we have a void (inaudible) the subpoena. We are tied up about the process to get information, it's the outcome. Are we going to have a match with utility companies that will lead to information (inaudible)? On page 7, look at 1 b, it says, you can require the production of books, records and papers by subpoena. That's in current law. The daily exchange with public utilities is in 1 g. Mr. Kuntz is correct. Federal mandate says that the states must at least be able to do this by subpoena. When ND enacted welfare reform in 1997, they didn't do that. So ND 12 years ago decided to depart from the federal mandate and not follow the formality of the subpoena.

Rep. Weisz: Jim, the way I'm reading it, 1b does give you the ability to subpoena, including the utility currently.

James Fleming: It does. Look on page 8 of original bill, line 23. Certain records held by private entities with respect to individuals who owe or are owed child support, consisting of

name and address. That's in current law. Seems inconsistent in the code section that you could only get name and address by the data agreement, but by the subpoena you could get the social security number and anything else. We perceive that as ambiguity in the law that you are here every two years and we want to take the opportunity to have the law clarified in this area.

Rep. Weisz: Is there an issue with liability from the standpoint of if you get a subpoena, they will give you the social security number, it's not their liability issue (inaudible). If they are in a gentlemen's agreement so to speak, is there a concern from their end, (inaudible) social security number (inaudible), is there a chance for us to be held liable for security identity theft?

James Fleming: No. This bill does not include all of the subsections for 500908.2. One of the provisions is not to be amended. If they do it under subpoena, they are immune from liability.

We have many of the amendments he requested on page 7, line 27 (inaudible). Pages 8, line 10 we couldn't. Page 8, lines 23 and 25 those are all amendments he proposed in his testimony. The amendments on page 8 line 26 and 27 an area where we are not in complete agreement. We would like to get by a subpoena or by data agreement other requested relevant income or asset information. This section applies to all public utilities, which includes cable and cell phone, industrial utilities and cooperatives. MDU have no social security numbers for a large number of customers. Cellular phones companies have all social security numbers of members. Cooperatives pay dividends and have names and addresses. If we ask who is getting a dividend we can intercept for arrears. That is the danger of putting everything under the head of public utilities is some have different categories of information. I told Mr. Kuntz if you are making payouts to customers and you don't have social security numbers, I don't see us doing a match with your particular company any time soon.

Rep. Weisz: Currently in a subpoena it's not an issue of getting a social security number with a subpoena, right?

James Fleming: We don't believe it is, but there is that ambiguity in the code with it. Mr. Kuntz talked about his company's preference in getting subpoena. Under these amendments the ability to do a data access, if you look at the amendment on page 8, line 30, it says, pursuant to a subpoena if requested. The question still is how much data are we going to get.

Rep. Nathe: In Section 13, Section 3, page 9, no 6, did you follow that? Seems the way this reads, the state can basically request any of the information they want to. This seems pretty broad. Mr. Kuntz would like to see those lines removed. How does that jive with your amendments?

James Fleming: Our amendments would retain that language but, would add at the end that the department cannot insist on a data access if the entity requests a subpoena. Then we go back to the session on the subpoena. What was not presented at the committee hearing that I would like to convey to us is. There is nothing that prohibits us from subpoena that information today.

Rep. Weisz: Explain why you couldn't currently enter into a voluntary agreement with an entity. What would prohibit you from entering into a data sharing agreement?

James Fleming: For the (inaudible) put immunity in this section to attach to what we are doing. We need to find one of the hooks in that statute to tie it to.

Rep. Weisz: You mean immunity wouldn't apply today if you all got together and entered into a (inaudible) sharing agreement?

James Fleming: There would be a question there and you don't want to fool around with any doubt when it comes to (inaudible). To protect that we would issue (inaudible) subpoena, which is a (inaudible) subpoena.

Rep. Frantsvog: It seems to me I recall Mr. Kuntz in his testimony questioning whether he even had social security numbers. I'm gathering from the comments you are making today, that I think you have a pretty good idea of what each of these entities, what kind of information they have. So wouldn't it be in your best interest to try and voluntarily work out an agreement with them?

James Fleming: We are shooting for that.

Rep. Conrad: Looks like MDU amendments have been incorporated with amendments the department has.

James Fleming: Not quite. We haven't limited the subpoena to just names and SS#'s.

Rep. Conrad: (Inaudible).

Rep. Weisz: They would have to provide them if they do have them.

Rep. Conrad: (Inaudible) if they don't have it (inaudible).

Rep. Weisz: (Inaudible) SS#'s obviously.

Rep. Frantsvog: Back on issues you discussed previously on SS#'s, brief me on that.

Mr. Kuntz: We have some SS#'s for customers, but all. Our concern with this bill goes to the fact that it isn't limited to names and addresses. They have expanded that here now to go to SS#'s and all other information in the customer's file that is irrelevant. That's payment history, utility usage, and they don't need that from us. We doubt they are going to find anybody on our list that they don't already have on their list. Is the legislature comfortable making all our information available to this agency on the hope to find 3 or 4 obligors. That's the first concern. If information is compromised and it happens here, the agency is going to say we are sorry and we are going to be left to clean up the mess? The other concern is lines 3-6 on page 9. Any information they deem relevant from any business from the state. It comes to a point you step on people's privacy rights.

Rep. Conrad: (Inaudible) for those who have child support obligations right?

Mr. Kuntz: It's not limited to that. They are asking for information on all our customers.

Rep. Conrad: What other data would they be asking for?

Mr. Kuntz: It says, all information regarding these customers or any relevant information they have that this business has. It is not limited to those sorts of things.

Rep. Weisz: From your company's perspective, you don't have any issue from a standpoint if somebody says we have a Jon Doe, can you match your records with that?

Mr. Kuntz: No. If they gave us the SS#'s of who they are looking for, we can look and see if we have SS#'s and if we do, we would give them the information of addresses.

Rep. Weisz: Are you willing to do this voluntarily? If you would have immunity under these provisions?

Mr. Kuntz: If we have the immunity and the agreement is structured in the way it works for us, we don't have any problem with doing it voluntarily. We prefer it that way rather than subpoenas that would come on a random basis.

Rep. Weisz: The best way to resolve this is to quickly go through section by section. Speak up if you have a problem as I go through these.

Section 1, deleting that language. If not, ok. Section 2, change in lines 8-9, ok, everybody comfortable with that? Section 3, (no issues). Section 4, no (issues), Section 5, (no issues), Section 6, (no issues), Section 7 added language by department.

Rep. Damschen: I just wanted to clarify that my silence does not imply comfort. I would comment that the whole thing, you said we had time to digest it and I almost got indigestion reading it. I hope that there isn't a section in the code that is any more invasive and intrusive this particular one.

Rep. Weisz: I can't disagree with you with you.

Rep. Damschen: I realize there is probably a lot of history that has brought on this. But, it is amazing. Continue with your section by section.

Chairman Weisz: Now let's take up Section 8.

Rep. Porter: My personal feelings are the department and the industry are working. I don't think they are there yet so I wouldn't feel real comfortable in putting the department's amendments on the bill as of yet. I would be comfortable removing Section 8 and allowing them in the second half to continue their discussions and work with the Senate to see if they can come to agreement.

Rep. Potter: We have two options: Senate to work on it further. Either to delete it or leave it in and we are uncomfortable with this and would like you to continue working on this. Am I understanding you?

Rep. Porter: No. The risk of doing it that way is that the Senate passes it and there is nothing worked on and it becomes a law.

Chairman Weisz: It won't be an issue for conference committee. The option is we have lots of suggested amendments. I'm personally uncomfortable only from the standpoint of the industry amendments because it shouldn't take five pages of amendments to address the problem of data match. I understand what they are getting at.

Rep. Porter: The other comment from the department's standpoint was, these are only a day old and half old and it we certainly have many days of the session left for them to work this out.

Rep. Porter: Move to remove Section 8.

Rep. Damschen: Second.

Voice Vote: 13 yeas, 0 nays, 0 absent.

MOTION CARRIED.

Chairman Weisz: Section 9. Everyone ok with this. Ok.

Section 10 has to do with personal property. Everyone comfortable with Section 10? Ok.
Section 11? Ok. Section 12?

Rep. Porter: Same comment I made in Section 8. They need to continue working towards working on resolving their differences as this bill moves forward. In regards to Section 12, I would **Move the Kuntz amendments**. Start on page 7, line 27 instead of "law" have the code. On page 8, line 23, "certain information...."

Chairman Weisz: Specifically taking out social security numbers.

Rep. Nathe: Second.

Rep. Potter: Page 7, line 27, with the suggested amendments (inaudible) instead of the word now. I'm not sure what significance that has. What's the difference between (inaudible)?

Chairman Weisz: That covers more than just what's in, but, that would be in the Century Code versus administrative. It would be acceptable to the department if I recall right.

Voice Vote: 13 yeas, 0 nays, 0 absent.

Motion Carried for adopting Kuntz amendments.

Rep. Conrad: Motion to add social security numbers.

Rep. Holman: Second.

Roll Call Vote: 7 yes, 6 no, 0 absent.

Motion Carried to add social security numbers.

Chairman Weisz: Section 13 or 14? Only other issue in Section 15, suggested amendments will address some of the concerns.

Rep. Porter: If you take the department's amendments and tear off page 4 that addresses the agreement between the industry and the department (drops sentence).

Rep. Porter: Move the amendments.

Rep. Kilichowski: Second.

Chairman Weisz: That would change it from 24 hours to 7 business days.

Voice Vote: 13 yeas, 0 nays, 0 absent.

Rep. Conrad: Motion for a DO PASS.

Rep. Hofstad: Second.

Jim Fleming: Before the committee acts on this, Section 8, the committee also needs to adopt an amendment to Section 19 effective date.

Chairman Weisz: Legislative Council will correct that anyway.

Roll Call Vote: 12 yeas, 1 nays, 0 absent.

BILL CARRIER: Rep. Weisz.

FISCAL NOTE
Requested by Legislative Council
03/16/2009

Amendment to: Engrossed
HB 1175

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$9,754	\$18,934		
Appropriations			\$0	\$0		

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This Bill relates to child support enforcement requiring gaming operators to provide information on winners to DHS; allows insurers to exchange information before paying claims; convenes a task force to study the interaction between the business community and the child support enforcement program.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact is related to creating a secure internet interface for gaming operators to obtain child support pay-off information.

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.*

This Bill will increase child support collections, some of which are retained by the state and used to offset grant costs. However, the amount of increased collections and the portion retained by the state is undeterminable.

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 effect on expenditures is related to creating a secure internet interface for gaming operators to obtain child support pay-off information. The fiscal impact will be covered within the existing budget by re-prioritizing IT Projects.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The fiscal impact will be covered within the existing budget by re-prioritizing IT Projects.

Name:	Brenda M. Weisz	Agency:	DHS
Phone Number:	328-2397	Date Prepared:	03/17/2009

FISCAL NOTE
Requested by Legislative Council
02/20/2009

Amendment to: HB 1175

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$9,754	\$18,934		
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2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This Bill relates to child support enforcement. The Bill requires gaming operators to provide information on winners to the Department.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

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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 effect on expenditures is related to creating a secure internet interface for gaming operators to obtain child support pay-off information. The fiscal impact will be covered within the existing budget by re-prioritizing IT Projects.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The fiscal impact will be covered within the existing budget by re-prioritizing IT Projects.

Name:	Brenda M. Weisz	Agency:	DHS
Phone Number:	328-2397	Date Prepared:	02/25/2009

FISCAL NOTE
Requested by Legislative Council
02/19/2009

Amendment to: HB 1175

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$9,754	\$18,934		
Appropriations			\$0	\$0		

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This Bill relates to child support enforcement. The Bill requires gaming operators to provide information on winners to the Department.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact is related to creating a secure internet interface for gaming operators to obtain child support pay-off information.

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.*

This Bill will increase child support collections, some of which are retained by the state and used to offset grant costs. However, the amount of increased collections and the portion retained by the state is undeterminable.

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 effect on expenditures is related to creating a secure internet interface for gaming operators to obtain child support pay-off information. The fiscal impact will be covered within the existing budget by re-prioritizing IT Projects.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The fiscal impact will be covered within the existing budget by re-prioritizing IT Projects.

Name:	Brenda M. Weisz	Agency:	DHS
Phone Number:	328-2397	Date Prepared:	02/19/2009

FISCAL NOTE
Requested by Legislative Council
01/02/2009

Bill/Resolution No.: HB 1175

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$9,754	\$18,934		
Appropriations			\$0	\$0		

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This Bill relates to child support enforcement. The Bill requires the Department to implement, and insurers to participate in, an insurance data match. The Bill also requires gaming operators to provide information on winners to the Department.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This Bill will enhance child support collections and improve internal operational efficiencies. The amount of the increased child support collections and operational savings related to efficiencies is undeterminable.

The fiscal impact is related to creating a secure internet interface for gaming operators to obtain child support pay-off information.

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.*

This Bill will increase child support collections, some of which are retained by the state and used to offset grant costs. However, the amount of increased collections and the portion retained by the state is undeterminable.

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 effect on expenditures is related to creating a secure internet interface for gaming operators to obtain child support pay-off information. The fiscal impact will be covered within the existing budget by re-prioritizing IT Projects.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The effect on expenditures is related to creating a secure internet interface for gaming operators to obtain child support pay-off information. The fiscal impact will be covered within the existing budget by re-prioritizing IT Projects.

Name:	Brenda M. Weisz	Agency:	DHS
Phone Number:	328-2397	Date Prepared:	01/07/2009

VR
2/17/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

Page 1, line 1, remove "a new section to title 26.1 and"

Page 5, remove lines 1 through 23

Page 7, line 27, overstrike "law" and insert immediately thereafter "this code"

Page 8, line 22, remove the overstrike over "~~and~~"

Page 8, line 23, after "Certain" insert "information contained in"

Page 8, line 25, after the comma insert "subject to safeguards on privacy and information security."

Page 8, line 26 after the second underscored comma insert "and" and remove ", and other"

Page 8, line 27, remove "relevant information"

Page 8, line 30, after "companies" insert ", pursuant to an administrative subpoena"

Page 9, line 2, remove "and"

Page 9, remove lines 3 through 6

Page 10, line 2, replace "Exchange electronic records" with "Upon agreement, exchange information"

Page 11, line 22, replace "twenty-four" with "seven business days"

Page 11, line 23, remove "hours"

Page 13, line 3, replace "8, 14, 15, and 16" with "13, 14, and 15"

Renumber accordingly

Date: 2-17
 Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1175

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. Conrad Seconded By Rep. Holman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	✓
VICE-CHAIR VONNIE PIETSCH		✓	REP. KARI L CONRAD	✓	✓
REP. CHUCK DAMSCHEN		✓	REP. RICHARD HOLMAN	✓	✓
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI	✓	✓
REP. CURT HOFSTAD		✓	REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE		✓			
REP. TODD PORTER		✓			
REP. GERRY UGLEM	✓				

Total (Yes) 7 No 6

Absent 0

Bill Carrier _____

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

Sec. 12
MOTION Passed
add in names & addresses
SS#'s & SS#1s

Date: 2-17-09
Roll Call Vote #: 4

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1175

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. PORTER Seconded By Rep. Kilichowski

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ			REP. TOM CONKLIN		
VICE-CHAIR VONNIE PIETSCH			REP. KARI L CONRAD		
REP. CHUCK DAMSCHEN			REP. RICHARD HOLMAN		
REP. ROBERT FRANTSVOG			REP. ROBERT KILICHOWSKI		
REP. CURT HOFSTAD			REP. LOUISE POTTER		
REP. MICHAEL R. NATHE					
REP. TODD PORTER					
REP. GERRY UGLEM					
<i>Noice</i>					

Total (Yes) 13 No 0

Absent 0

Bill Carrier _____

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

Sec. 15 Page 4 suggested Amend By Dept.

Date: 2-17-09
Roll Call Vote #: 5

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1175

House HUMAN SERVICES Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. Conrad Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓	✓	REP. TOM CONKLIN	✓	✓
VICE-CHAIR VONNIE PIETSCH	✓	✓	REP. KARI L CONRAD	✓	✓
REP. CHUCK DAMSCHEN	✓	✓	REP. RICHARD HOLMAN	✓	✓
REP. ROBERT FRANTVOG	✓	✓	REP. ROBERT KILICHOWSKI	✓	✓
REP. CURT HOFSTAD	✓	✓	REP. LOUISE POTTER	✓	✓
REP. MICHAEL R. NATHE	✓	✓			
REP. TODD PORTER	✓	✓			
REP. GERRY UGLEM	✓	✓			

Total (Yes) 12 No 1

Absent 0

Bill Carrier Rep. Weisz

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

DO PASS AS Amended

REPORT OF STANDING COMMITTEE

HB 1175: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1175 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new section to title 26.1 and"

Page 5, remove lines 1 through 23

Page 7, line 27, overstrike "law" and insert immediately thereafter "this code"

Page 8, line 22, remove the overstrike over "~~and~~"

Page 8, line 23, after "Certain" insert "information contained in"

Page 8, line 25, after the comma insert "subject to safeguards on privacy and information security,"

Page 8, line 26 after the second underscored comma insert "and" and remove ", and other"

Page 8, line 27, remove "relevant information"

Page 8, line 30, after "companies" insert ", pursuant to an administrative subpoena"

Page 9, line 2, remove "and"

Page 9, remove lines 3 through 6

Page 10, line 2, replace "Exchange electronic records" with "Upon agreement, exchange information"

Page 11, line 22, replace "twenty-four" with "seven business days"

Page 11, line 23, remove "hours"

Page 13, line 3, replace "8, 14, 15, and 16" with "13, 14, and 15"

Renumber accordingly

YK
2/19/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

Page 1, line 1, remove "title 26.1 and two new sections to"

Page 5, remove lines 1 through 23

Page 7, line 27, overstrike "law" and insert immediately thereafter "this code"

Page 8, line 22, remove the overstrike over "~~and~~"

Page 8, line 23, after "Certain" insert "information contained in"

Page 8, line 25, after the comma insert "subject to safeguards on privacy and information security."

Page 8, line 26 after the second underscored comma insert "and" and remove ", and other"

Page 8, line 27, remove "relevant information"

Page 8, line 30, after "companies" insert ", pursuant to an administrative subpoena"

Page 9, line 2, remove "and"

Page 9, remove lines 3 through 6

Page 10, line 2, replace "Exchange electronic records" with "Upon agreement, exchange information"

Page 11, line 22, replace "twenty-four" with "seven business days"

Page 11, line 23, remove "hours"

Page 11, remove lines 30 and 31

Page 12, remove lines 1 through 6

Page 13, line 3, replace "8, 14, 15, and 16" with "13 and 14"

Renumber accordingly

Patricia

HOUSE BILL - 11TH ORDER

: Speaker,

Engrossed (~~Reengrossed~~) House Bill # 1175

Introduced by Representatives *Human Services Committee*
Senators *@ Request of Dept of Admin Services*

Bill Title: (Read it)

Fiscal Note prepared by *Dept of Human Services* on *1/2/09*

Shows: _____

Your *Human Service* Committee recommends amendments which were passed on (a/the) previous 6th order and when so amended and engrossed recommends

Do Pass
Do NOT Pass

On Engrossed (Reengrossed) House Bill #

By a vote of 12 yeas, 1 nays, and 0 absent and not voting.

MR. SPEAKER

REPORT OF STANDING COMMITTEE

HB 1175: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1175 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "title 26.1 and two new sections to"

Page 5, remove lines 1 through 23

Page 7, line 27, overstrike "law" and insert immediately thereafter "this code"

Page 8, line 22, remove the overstrike over "~~and~~"

Page 8, line 23, after "Certain" insert "information contained in"

Page 8, line 25, after the comma insert "subject to safeguards on privacy and information security,"

Page 8, line 26 after the second underscored comma insert "and" and remove ", and other"

Page 8, line 27, remove "relevant information"

Page 8, line 30, after "companies" insert ", pursuant to an administrative subpoena"

Page 9, line 2, remove "and"

Page 9, remove lines 3 through 6

Page 10, line 2, replace "Exchange electronic records" with "Upon agreement, exchange information"

Page 11, line 22, replace "twenty-four" with "seven business days"

Page 11, line 23, remove "hours"

Page 11, remove lines 30 and 31

Page 12, remove lines 1 through 6

Page 13, line 3, replace "8, 14, 15, and 16" with "13 and 14"

Re-number accordingly

2009 SENATE HUMAN SERVICES

HB 1175

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1175

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 3/04/09

Recorder Job Number: 10226

Committee Clerk Signature

Mary K. Monson

Minutes:

Senator J. Lee opened the hearing on HB 1175 relating to child support enforcement.

James Fleming (Deputy Director and Chief Legal counsel of the Child Support Enforcement Division of the Dept. of Human Services) testified in support of HB 1175 and offered amendments. Attachment #1

Senator J. Lee asked what they do about mineral payments.

Mr. Fleming said they attempted, on a test basis, to obtain information on customers from a company involved in mineral exploration and were told to get a subpoena.

Senator J. Lee – this would permit you to get the information without a subpoena?

Mr. Fleming – correct.

Senator Dever asked about the history of the bill and referred to two different sets of amendments.

Mr. Fleming instructed the committee to ignore anything that has the .0200 and explained why it was engrossed twice.

Jim Goetz (Chairman and CEO of Security First Bank of ND) testified in opposition to certain sections of HB 1175. Attachment #2

Senator J. Lee asked if he didn't see any obligation to help in the collections of child support.

Mr. Goetz said he would love to help collect the money but asked why he couldn't be reimbursed for his cost. He said it is a matter of principle.

Discussion continued on participating in collection of arrearage of child support in ND and the cost of it.

Jack McDonald (Representing Independent Community Banks of ND) informed the committee that he would provide the committee with updated information since they had the wrong engrossed bill when preparing the testimony presented by Mr. Goetz.

Pat Ward (Association of ND Insurers and the Property & Casualty Insurance Association of America) testified in opposition to any new amendments to this bill. Attachment #3

He addressed the amendments presented by Mr. Fleming. He said the industry had been involved in the ongoing drafting of these amendments but he felt it was still a work in progress.

(Meter 43:50) He gave examples of objections to the amendments.

Senator J. Lee asked for response to the concern that the idea of voluntary participation would be a liability.

Mr. Ward was not aware of any concern with this.

Senator J. Lee – when you make everything voluntary it can be a problem because someone can say “I don't want to”. Then we're not getting the information. What do we do about it.

Mr. Ward said it's more the process and the way this came about without input from the people who handle the claims. He felt they could get to a time where this could be done on a mandatory basis but didn't think it was fair with this bill and these amendments. There hasn't been adequate opportunity for input.

Senator J. Lee said her concern was that his testimony said the ultimate goal was to still come up with a voluntary program.

Mr. Ward said in their amendments they tried to provide different opportunities for different that insurers could comply.

Dale Haake (Nodak Mutual Insurance Company) spoke in opposition to amendments to HB 1175. Attachment #4

Steve Spilde (Chief Executive Officer of the ND Insurance Reserve Fund) presented testimony in opposition to the amendments proposed by the ND Dept. of Human Services. Attachment #5

Ron Ness (ND Petroleum Council) testified against the mandatory data sharing and supported the actions taken by the House on HB 1175.

Dan Kuntz (Montana Dakota Utilities) testified that they had 2 concerns with the way the bill stands now. (1) Page 6 line 10 on the engrossed bill – subpoena on an ongoing basis.

(2) The provision of social security numbers.

Kent Blickensderfer (Quest Communications) testified in support of the bill as it came from the house.

Bill Shalhoob (ND Chamber) had the same concerns as Mr. Ness. Item 3 is very broad, very general. Without some restrictions it seems to be very onerous to business.

Mike Rud (ND Retail Association of Petroleum Marketers) opposed section 3 and agreed that it was very onerous and would be a burden to retailers and other small businesses across ND.

The hearing on HB 1175 was closed.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1175

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 3/09/09

Recorder Job Number: 10516

Committee Clerk Signature

Mary K. Monson

Minutes:

Senator J. Lee opened committee discussion on HB 1175 and asked Mr. Fleming to talk about the amendment dated 3/6/09 (attachment #6).

James Fleming (Dept. of Human Services) reminded the committee that the concerns came from the utility industry and the insurance industry. There were also some general business concerns and concerns from Mr. Goetz. The amendments were drafted at the request of the committee chair and find middle ground for most of those concerns.

Senator J. Lee explained the task force and reasons why she requested it.

Mr. Fleming explained that the original amendments would have authorized a data match with any entity that might have obligor records. He gave an example and explained the challenge they had in trying to draft legislation. These amendments do not include the language that brought the objections.

He felt that, except for Mr. Goetz, they had addressed the concerns of those who testified.

The task force idea was discussed.

Senator J. Lee asked for Mr. Schwindt's opinion.

Mike Schwindt (Dept. of Human Services) said task forces work. There is nothing in the bill that is not being done somewhere in the country already – but it's not being done in ND. The inclusion of legislators on the task force was discussed. It would be helpful to have one senator and one representative on it to help get the information out.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1175

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10711 (meter 02:00)

Committee Clerk Signature

Mary K. Mouson

Minutes:

Senator J. Lee brought the committee back to order to work on HB 1175.

Looking at the amendments dated 3/9/09 she reported that all those who testified were comfortable with them.

Senator Erbele moved to adopt the amendments.

Second by **Senator Heckaman**.

The amendment dated 3/9/09 included adding two legislators to the task force.

Discussion about the amendment proposed by Mr. Goetz – no one else seemed to have the same concern. They weren't being considered.

Roll call vote 6-0-0. Amendment adopted.

Senator Heckaman moved a **Do Pass as Amended and rerefer to Appropriations**.

Second by **Senator Erbele**.

Roll call vote 6-0-0. Motion carried.

Carrier is **Senator J. Lee**.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1175

Page 1, line 1, after "chapter" insert "26.1 and a new section to chapter"

Page 1, line 9, after the first semicolon insert "to provide for a task force;"

Page 4, after line 27, insert:

"SECTION 8. A new section to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Child support insurance data match. Before paying a claim under a contract of insurance issued in this state, an insurer or government self-insurance pool may exchange information about the claimant with the department of human services or its designee. This section applies notwithstanding any provision of law making the information confidential. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith under this section. 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, line 10, remove "on a one-time or ongoing basis"

Page 8, line 1, remove "and" and after "numbers" insert ", and other requested relevant income or asset information"

Page 8, line 6, after "subpoena" insert "if requested"

Page 11, after line 28, insert:

"SECTION 18. CHILD SUPPORT ENFORCEMENT TASK FORCE. The department of human services shall convene a child support enforcement task force to study the interaction of the business community and the child support enforcement program. The task force shall include two members of the legislative assembly appointed by the chairman of the legislative council. The

department shall extend invitations to representatives from the financial and insurance industries, employers, public utilities, and other business interests. The study must include strategies for encouraging voluntary participation in electronic data matches, the feasibility and desirability of mandatory data matches or mandatory electronic transfer of information, the identification of potential sources of income and asset information regarding child support obligors, creation of a lien registry for property owned by a delinquent child support obligor, and the development of procedures for conducting data matches that are secure and limited to the information needed to assist in the establishment and enforcement of child support and medical support orders. The findings and recommendations of the task force, together with any legislation required to implement the recommendations, must be presented by the department of human services to the Sixty-second Legislative Assembly.”

Renumber accordingly

JF3
3-12-09
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1175

Page 1, line 1, after "chapter" insert "26.1 and a new section to chapter"

Page 1, line 9, after the first semicolon insert "to provide for a task force on child support enforcement;"

Page 4, after line 27, insert:

"SECTION 8. A new section to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Child support insurance data match. Before paying a claim under a contract of insurance issued in this state, an insurer or government self-insurance pool may exchange information about the claimant with the department of human services or its designee. This section applies notwithstanding any provision of law making the information confidential. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith under this section. The court shall award reasonable attorney's fees and costs against any person that commences an action that is subsequently dismissed by reason of the immunity granted by this section.

Page 6, line 10, remove "on a one-time or ongoing basis"

Page 8, line 1, remove "and" and after "numbers" insert ", and other requested relevant income or asset information"

Page 8, line 6, after "subpoena" insert "if requested"

Page 11, after line 28, insert:

"SECTION 18. CHILD SUPPORT ENFORCEMENT TASK FORCE. The department of human services shall convene a child support enforcement task force to study the interaction of the business community and the child support enforcement program. The task force must include two members of the legislative assembly appointed by the chairman of the legislative council. The department shall extend invitations to representatives from the financial and insurance industries, employers, public utilities, and other business interests. The study must include strategies for encouraging voluntary participation in electronic data matches, the feasibility and desirability of mandatory data matches or mandatory electronic transfer of information, the identification of potential sources of income and asset information regarding child support obligors, the creation of a lien registry for property owned by a delinquent child support obligor, and the development of procedures for conducting data matches that are secure and limited to the information needed to assist in the establishment and enforcement of child support and medical support orders. The department of human services shall present the findings and recommendations of the task force, together with

any legislation required to implement the recommendations, to the sixty-second legislative assembly."

2 of 2

Page 11, line 29, replace "13" with "14" and replace "14" with "15"

Renumber accordingly

Date: 3/11/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1175

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 3/9/09

Action Taken Do Pass Do Not Pass Amended Rerefer to Appropriations
 Adopt Amendment Reconsider

Motion Made By Sen. Erbele Seconded By Sen. Heckaman

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3/11/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1175

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 98203.0301 Title 0400

Action Taken Do Pass Do Not Pass Amended Rerefer to Appropriations
 Adopt Amendment Reconsider

Motion Made By Sen. Heckaman Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator J. Lee

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

REPORT OF STANDING COMMITTEE

HB 1175, as engrossed: 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 (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1175 was placed on the Sixth order on the calendar.

Page 1, line 1, after "chapter" insert "26.1 and a new section to chapter"

Page 1, line 9, after the first semicolon insert "to provide for a task force on child support enforcement;"

Page 4, after line 27, insert:

"SECTION 8. A new section to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Child support insurance data match. Before paying a claim under a contract of insurance issued in this state, an insurer or government self-insurance pool may exchange information about the claimant with the department of human services or its designee. This section applies notwithstanding any provision of law making the information confidential. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith under this section. The court shall award reasonable attorney's fees and costs against any person that commences an action that is subsequently dismissed by reason of the immunity granted by this section."

Page 6, line 10, remove "on a one-time or ongoing basis"

Page 8, line 1, remove "and" and after "numbers" insert ", and other requested relevant income or asset information"

Page 8, line 6, after "subpoena" insert "if requested"

Page 11, after line 28, insert:

"SECTION 18. CHILD SUPPORT ENFORCEMENT TASK FORCE. The department of human services shall convene a child support enforcement task force to study the interaction of the business community and the child support enforcement program. The task force must include two members of the legislative assembly appointed by the chairman of the legislative council. The department shall extend invitations to representatives from the financial and insurance industries, employers, public utilities, and other business interests. The study must include strategies for encouraging voluntary participation in electronic data matches, the feasibility and desirability of mandatory data matches or mandatory electronic transfer of information, the identification of potential sources of income and asset information regarding child support obligors, the creation of a lien registry for property owned by a delinquent child support obligor, and the development of procedures for conducting data matches that are secure and limited to the information needed to assist in the establishment and enforcement of child support and medical support orders. The department of human services shall present the findings and recommendations of the task force, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Page 11, line 29, replace "13" with "14" and replace "14" with "15"

Renumber accordingly

2009 TESTIMONY

HB 1175

January 28, 2009

#1

Testimony
House Bill 1175 – Department Of Human Services
House Human Services Committee
Robin Weisz, Chairman
January 28, 2009

Chairman Weisz, members of the House Human Services Committee, I am James Fleming, Deputy Director and Chief Legal Counsel of the Child Support Enforcement Division of the Department of Human Services. I am here to ask for your favorable consideration of House Bill 1175, with the amendments attached to my testimony.

It has been a successful biennium for the Department of Human Services and the child support enforcement program. In 2008, the National Child Support Enforcement Association named North Dakota as program of the year, and our director as the manager of the year. This is in addition to several awards from our federal Office of Child Support Enforcement. Our program performance ranked third in the country, based in part on collecting 75.85% of support in the month in which it is due, and making a collection toward delinquent support in 72.67% of the cases in which there is an arrearage. These collection rates have allowed, for the first time, for the unpaid principal balance of arrears in IV-D cases to decline. Total collections for Calendar Year 2008 were an all-time record of \$122,734,000, of which about 90% is paid to families.

However, there is still more work to do to achieve our goal of having a world-class program that produces reliable collections for families. At the end of December 2008, we had 4,888 cases in our caseload in which we were actively trying to locate an obligor's address, employer, or assets. Obtaining these pieces of information is critical to obtaining a court order for child support at an appropriate level and to enforcing the order.

For comparison, at the end of the federal fiscal year, we had only 89 children in our caseload needing paternity to be established (out of 24,269 children in the IV-D caseload who were born out of wedlock); 4,746 court orders to establish (out of a total IV-D caseload of 36,918); and 7,862 cases with arrears in which there was no payment in the last year (out of a total IV-D arrears caseload of 28,772).

Given the work yet to do and the large number of obligors we are trying to locate, several provisions in House Bill 1175 would improve our program's access to information, in addition to internal efficiencies.

Section One: This is a technical change to remove language that is moot based on legislation enacted during the 2007 Legislative Session.

Section Two: This section is proposed to revise and clarify terminology. Technically, a contempt proceeding is not a method of punishing a person. Rather, the goal of such a proceeding is to compel a person to do something that he or she already has a duty to do.

In the last few years, we have increased our actions against employers who either do not withhold money as required in an income withholding order, or who withhold the money from the obligor but illegally keep the money without paying it to the State Disbursement Unit (SDU). In applying the provisions in current law that are proposed to be amended in the bill, it was determined that some clarification would be helpful to indicate that the same penalties and remedies apply in both contexts – failure to withhold income and failure to deliver income that has been withheld.

Section Three: A recent North Dakota Supreme Court decision held that a person could be prosecuted for willfully failing to pay child support that is past due, but noted that the statute was not as clear as it could be. State v. Nastrom, 2008 ND 110, 750 N.W.2d 432. This section of the bill is proposed to clarify that a person can be prosecuted for willfully failing to pay child support arrears (which is not a debt that is subject to any statute of limitations).

Section Four: This section of the bill recognizes that since the Department has taken over issuing income withholding orders in all child support cases, there is no longer a need for the clerks of court to receive this information. The court administrator's office is aware of this proposed amendment.

Section Five: In 2003, the Legislature passed a law to address the following scenario:

Dad owes Mom several thousand dollars of past-due child support. A few months ago, custody of the minor children was changed from Mom to Dad. Mom now owes Dad child support on behalf of the children but also has accumulated arrears. In other words, Dad owes arrears to Mom and Mom owes arrears to Dad.

The legislative history of the 2003 legislation indicates that an offset of the arrears in the example is a convenient and efficient way of reducing both parents' arrears to each other (assuming none of the arrears are assigned to the State).

However, as applied to the current and future support that is owed to the children, the legislative history also indicates:

An offset should not deprive children of the current support they need for food, clothes, shelter, and other essentials

Therefore, except as provided in subsection 4 of this section, an offset of child support arrears against child support that is due in the current month, or that will be due in a future month, is not permitted.

After balancing the interests involved of providing support for the children's current needs with the impact of enforcing an arrearage that is owed by a parent who currently has custody of the children, the 2003 Legislature enacted the following language:

An obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation.

N.D.C.C. § 14-09-09.33(5).

Recently, the North Dakota Supreme Court upheld an offset of current support with arrears, despite the language above, based on language in N.D.C.C. § 14-09-09.24 authorizing parents to enter into a written agreement for assuring the regular payment of child support in lieu of income withholding, and language in N.D.C.C. § 14-09-09.30 regarding

the monthly amount due for purposes of income withholding. Walberg v. Walberg, 2008 ND 92, 748 N.W.2d 702.

We believe that the court's decision, in attempting to harmonize the multiple statutes involved, reached a conclusion that is inconsistent with the intent of the Legislature and jeopardizes the right of children to obtain current support from an obligor. Thus, this section of the bill would clarify the interaction of these statutes and fulfill the intent of the provision enacted in 2003.

Section Six: The change in the first part of this section is to give courts and the SDU the authority to stop collecting support from an obligor and refund any collections if the obligee is deceased and heirs or next of kin cannot be found. Currently, our program would continue to attempt to collect the support from the obligor, make best efforts to find an heir or next of kin. If after 3 years we are unable to find an heir or next of kin, we turn over the collections to the Unclaimed Property Division.

The second part of this section updates a duplicative reference to the clerks of court and the child support program, consistent with the proposed change in **Section Four**.

Section Seven: Currently, a person who illegally hunts, traps, or fishes when the person's privileges have been suspended by a court is guilty of a Class A misdemeanor, but a person who illegally hunts, traps, or fishes when the person's privileges have been suspended by the child support enforcement program is guilty of only a Class B misdemeanor (the penalty that applies to general game violations). The amendment to existing law is proposed for the sake of consistency.

Section Eight: As indicated at the beginning of my testimony, improving our access to information for locating parents and their income or assets is a key to improving the collection of support for children. Nationally, the Child Support Lien Network (a multi-state partnership hosted by Rhode Island) and the federal Office of Child Support Enforcement each conduct a match between insurance claims and delinquent obligors.

In North Dakota, participation by insurance companies is currently voluntary, and we appreciate the cooperation of the insurance companies who are choosing to participate. However, one of the concerns expressed by some companies at a national level is that they would feel more protected from lawsuits if the process was mandated. For this reason, some will not participate unless it is mandated, which has led to the proposed language.

The proposed section includes the same broad immunity protections that apply to employers who honor income withholding orders or third parties who honor requests for information or liens against obligors' property.

Attached to this testimony is a set of proposed amendments to this section that have been prepared to respond to some questions posed by an insurance company representative. We believe the amendments improve the original bill by narrowing the type of insurance claims that are supposed to be reported and providing further detail regarding the proposed match process, and we encourage the committee to adopt the amendments before making a recommendation on the final bill.

At the present time, we would plan to implement the match process through the existing match processes that are in place with the Child Support Lien Network or the Office of Child Support Enforcement. Many insurers today are participating in these networks through a centralized claims processor called ISO, and the amendments confirm that this existing service will suffice under the proposed match process.

Under **Section Nineteen**, the effective date of this section would be delayed until July 1, 2010, to give the Department the opportunity to continue working with the insurance industry on the details of the match process. The current voluntary process would remain in effect until that time.

Section Nine: As mentioned earlier, we have increased our enforcement activities regarding employers who do not honor their legal duties in the child support area. One common area is reporting of new hires, where we are authorized to assess a civil penalty of \$20 per failure to report an employee. The current process of collecting this penalty has proven slightly confusing and cumbersome in application because it involves a third party (the employer) in a contempt proceeding in a court case between the two parents. We believe it would be simpler for all if we simply brought a separate legal action against the employer to collect any civil penalty that is imposed for failing to report new hires.

Section Ten: Through our High Intensity Enforcement Unit, we are pursuing more liens against property in the hands of third parties. Currently, the law only requires that the lien be filed with the Secretary of State or the county recorder of the county where the property is located and provided to the obligor. However, as a practical matter, we need to

send the third party a copy of the lien for them to know about it. The new language would reduce the paperwork in this process and authorize the filing of our liens directly with the third party who possesses the property. This issue arises quite often when placing liens on capital distributions from utility cooperatives, which can often be for small amounts that are not subject to other claims.

Section Eleven: This section relates to the same issue in **Section Six** when an obligee is deceased and no heirs or next of kin can be found. This section authorizes the records of the debt to be removed from the state's official payment records so future collection actions can be avoided.

Section Twelve: The law proposed to be amended in this section was enacted in response to numerous mandates contained in the federal welfare reform act of 1996. These mandates included mandatory data sharing agreements with financial institutions, authority to issue administrative subpoenas, and the right to access (including automated access) records of government entities and public utilities. In large part, the language in this section follows the language in federal law, to ensure compliance with the federal mandates and preserve funding for the Temporary Assistance to Needy Families and Child Support Enforcement programs.

The parts of the original law that are not proposed to be amended in House Bill 1175, and will remain in effect, provide strong immunity protection for entities that cooperate with child support and require that any confidentiality be preserved. We take our access to information very

seriously, and only use the information we obtain for program purposes or as otherwise required by law.

As we shift more attention to locating obligors and their employers or assets, this law is becoming more important to our operations and to improving our collection efforts. Our experience in applying this law has also taught us ways in which we feel the law can be improved.

For example, in terms of obtaining information, a lot has changed in the 12 years since the law was first passed. Instead of a subpoena in a specific case on a one-time basis, a far more efficient way to obtain and compare information today is a data sharing agreement where an entire list of individuals is compared to our list of child support obligors on an ongoing, periodic basis using a computerized process. One entity receiving a request from our program to enter into a data sharing agreement responded by claiming that an administrative subpoena was the exclusive way that we could obtain the access to information provided in subdivision 1(g) of the law. We disagree under current law, but feel a clarification would be helpful.

Another recent example is a data match with a utility cooperative. The company was very willing to work with us, but the law expressly authorizes only that the name and address of the customer and the customer's employer be provided (page 8, line 26 of the bill); what is not as clear is the authority to share the customer's social security number or asset information. However, the law allows us to obtain information regarding obligors, which we can only do with a reasonable degree of certainty if we match based on social security numbers. Rather than

imply the authority to exchange all relevant information with utilities, we propose the clarification in the bill.

On Page 9, lines 3 through 6, we propose similar authority to obtain records of any person that we become aware of who possesses information about obligors. Except for subpoenas, the authority in current law to obtain access to information is limited to government agencies, financial institutions, and public utilities. In reality, there are other sources of information regarding multiple obligors. A recent example would be the class action lawsuit from the train derailment in Minot. If this provision had been in place, we may have been able to match the potential claimants under the lawsuit to determine who was obtaining a settlement, and apply some of those funds to the care of their children.

Finally, identity theft can be a concern for our data sharing partners. Current law gives Child Support Enforcement the ability to obtain information from many entities. But some would prefer to receive the information from us and conduct their own match. As long as the entity agrees to honor state law requiring it to keep the information confidential and not use it for purposes other than our program, we would like the flexibility of accommodating such a request and allow the entity to do the match and report the outcome to us (Page 10, lines 2 through 5).

In response to questions and concerns regarding this section as originally introduced, we have included some amendments that are attached to my testimony. One amendment clarifies that our automated access to records of a public utility is "subject to safeguards on privacy and information security." We would not seek to obtain automated access to

the computer system of a public utility if the access could not be secure and limited to only the records authorized by law to be shared with Child Support Enforcement. Instead, we would work with the entity to form an agreement to exchange data files without the automated access. On Page 2 line 9, we also propose to clarify that the access would supplement, rather than supplant, the existing match processes with government entities, financial institutions, and insurers.

Section Thirteen: This section is proposed to account for the fact that federally-funded child support programs are now operated by some Indian tribes as well as states.

Section Fourteen: This section provides for a protest period for any collections received under **Section Fifteen** of the bill.

Section Fifteen: Common child support enforcement tools for North Dakota and other states today include intercepting federal and state tax refunds, insurance claims, and lottery winnings. Other states, particularly Colorado, have had similar success in intercepting other gambling winnings. Under this section, a gaming operator who is subject to North Dakota law (which excludes tribal casinos) would be required to report all winnings for which an IRS W-2G form is required prior to making a payment.

This connection to the IRS form is important; a W-2G is only required for bingo winnings in excess of \$1,200 and other winnings, such as pari-mutuel winnings, of \$600. Based on the experience of other states and a contact we have had with the charitable gaming industry in North Dakota, we believe this allows for the number of reported winnings to be very

manageable for the gaming operator. We believe we can provide a web-based tool for the gaming operator that will allow it to obtain the needed information at whatever time of the day or night the operator may be making a payment to the winner. The fiscal note on the bill identifies the cost of computer programming to implement the web-based interface.

Under **Section Nineteen**, the effective date of this section and the protest period in **Section Fourteen** would be delayed until July 1, 2010, to give the Department the opportunity to work with the gaming industry on the details of the match process.

Section Sixteen: This section relates to the insurance match in **Section Eight**. If the attached amendments to **Section Eight** to respond to industry questions on the match process are adopted, this section can be deleted.

Section Seventeen: This section of the bill clarifies that the Department's authority to write off uncollectible child support arrears includes medical support arrears that stem from a Medicaid assignment.

Section Eighteen: The 2005 Session Law that is proposed to be amended in this section is the Uniform Parentage Act. The Department supported the enactment of the uniform law because it provided greater guidance in many areas. However, the transition clause that is proposed to be amended was recently interpreted by the North Dakota Supreme Court in an unexpected way, which results in the prior, more ambiguous law being applied to more cases. Gerhardt v. C.K., 2008 ND 136, 751 N.W.2d 702. The "old" paternity act is no longer widely available. As amended, the date of a complaint or motion to disestablish paternity

would govern which law applies, even if the paternity action occurred earlier.

Section Nineteen: As discussed earlier in my testimony, this section delays the effective date of the mandatory insurance match (**Section Eight**) and reporting of gaming winnings (**Sections Fourteen and Fifteen**) until July 1, 2010, to give the Department the opportunity to work with the affected industries on the details of the new processes.

Mr. Chairman, this gives an overview of the proposed bill and the amendments requested by the Department. I would be glad to respond to any questions the committee may have.

PROPOSED AMENDMENTS TO HOUSE Bill NO. 1175

Page 1, line 1, replace "two" with "a" and replace "sections" with "section"

Page 5, replace lines 3 through 23 with:

"Child support insurance data match.

1. Before paying a claim of five hundred dollars or more to a claimant under a contract of insurance issued in this state, an insurer, including a government self-insurance pool, shall either provide the department of human services or its designee with information about the claimant or compare the insurer's information regarding the claimant with information made available to the insurer by the department of human services or its designee. This subsection applies notwithstanding any provision of law making the information confidential.
 - a. An insurer that elects to provide information to the department of human services under this subsection shall provide, not less than ten days prior to making a payment to a claimant, the claimant's name, address, date of birth, and social security number. Other relevant and available information may be provided if requested by the department of human services.
 - b. An insurer that elects to compare information made available by the department of human services shall notify the department of human services, not less than ten days prior to making a payment to a claimant who owes or is owed child support, or against whom a child support obligation is sought, the claimant's name, address, date of birth, and social security number. Other relevant and available information may be provided if requested by the department of human services.
 - c. An insurer may comply with this subsection by participating in, and reporting the required claim data to, a centralized claim reporting organization that will conduct a data match of all applicable claims received against the department of human services' files of delinquent child support obligors and report the required data for each matching claimant to the department of human services or its designee on the insurer's behalf. The department of human services will make files of delinquent child support obligors

available to the centralized reporting organization for data matching purposes.

2. As used in this section, "claimant" means a beneficiary under a life insurance policy or an individual who brings a claim against an insured or under an insurance policy for compensation under insurance coverage for bodily injury, uninsured motorist, underinsured motorist, workers' compensation, or personal injury.
3. An insurer that provides claim information to the department of human services under subsection one also shall provide the telephone number of a facsimile machine or electronic mail address to which a lien or demand may be sent by the department of human services under chapter 35-34.
4. A claimant who refuses to provide to an insurer the information required to be submitted to the department of human services under this section may not receive payment on the claim and may not pursue a suit against the insured in this state for the amount of the claim.
5. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith to comply with this section. 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.
6. An insurer that fails to comply with this section is subject to the same liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.
7. This section does not apply to a health insurer participating in a data match under section 50-09-37.
8. A government self-insurance pool that complies with this section is not subject to subsection 1 of section 50-09-08.2.
9. Any claimant information that is exchanged under this section is confidential and may only be used to establish or enforce a child support or medical support obligation, or as otherwise permitted or required by law."

Page 7, line 27, after "of" insert "state"

Page 8, line 23, after "Certain" insert "information contained in"

Page 8, line 25, after the comma insert "subject to safeguards on privacy and information security,"

Page 8, line 26, after "other" insert "requested"

Page 8, line 27, after "relevant" insert "income or asset"

Page 9, line 3, after "is" insert "not subject to paragraph 1 or 2 of this subdivision, section 8 of this Act, or section 50-09-37, and who is"

Page 10, line 2, replace "Exchange electronic records" with "Upon agreement, exchange information"

Page 11, remove lines 30 and 31

Page 12, remove lines 1 through 6

Page 13, line 3, after the second comma insert "and" and remove ", and 16"

Renumber accordingly

#2

TESTIMONY IN OPPOSITION TO HB 1175

House Human Services Committee

January 28, 2009

Chairman Weisz and Members of the House Human Services Committee.

My name is Pat Ward and I represent the Association of North Dakota Insurers and the Property and Casualty Insurance Association of America in opposition to this bill.

We were provided a copy of the pre-filed bill a few weeks before the session started. Since that time members of our association, including Dale Haake of Nodak Mutual in Fargo, and myself, have attempted to meet with Mr. Fleming to draft suitable amendments. Throughout that time I have circulated the initial bill draft and proposed amendments to various companies in North Dakota and around the country. I can only tell you that, as of this morning, the vast majority of these companies have serious concerns with section 8 of this bill. To be blunt, this is a work in progress and not a finished product.

The purpose of section 8 is to somehow alert child support enforcement agencies that a person who is delinquent on their child support has a pending insurance claim and may be coming into some money. The problem is how to achieve this desired goal with a minimum amount of disruption and expense for all involved.

We are opposed to mandatory approaches such as were taken in Massachusetts and Oklahoma. What we do support are voluntary programs where the child support enforcement agency can contract for data matching services from one of the two vendors providing such services, the Federal Office of Child Support Enforcement (OCSE) or the Child Support Lien Network (CSLN).

We could get behind enabling legislation such as was adopted in Kansas. That legislation allowed the child support agency to enter into data matching agreements, but does not mandate insurer participation, and does not allow fees to be charged by the child support agency or the vendor.

Here is what one company right here in Bismarck has said:

I cannot support this bill even with the proposed amendments. I believe that it will prove overly cumbersome and cause delays/problems in the settling of claims. The NDDHR says they will be implementing a system that is not known or completed at this time and ask us to sign off in agreeing to provide info to a system we know nothing about, and apparently neither do they. If they perform like most government entities (See Medicare) there will be timely delays even if info is passed on to them. The bill says that we must notify them 10 days prior to making a payment to a claimant and that failing to do so will result in some sort of penalty. What if they don't respond to us? Can we simply move forward on the claim? Doesn't say if they would incur anything. Most likely not.

I see a problem as well in settling claims after you have told person in arrears in child support that you need to provide info to NDDHR and that all of a sudden the amount you might have agreed upon increases by the amount that they are behind in their payments. This would cause delay in settlements or break settlement talks completely. At some point I could envision the plaintiff bar challenging this if it becomes law as it would delay their getting their money as well.

What about settlements on the courthouse steps or where time is of the essence?

We believe that a study of this particular section would be the appropriate approach. We would suggest that section 8 of the bill be removed and replaced with language requiring a study of how best to accomplish this goal and that a voluntary system be created.

We would request that you amend section 8 to remove the mandatory child support insurance data match provision and substitute that with a study so that the industry can have proper input into how this should be addressed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

January 28, 2009

Page 5, line 1, after "**SECTION 8.**" remove lines 1 through 23 and replace with: "The Legislative Council shall study child support enforcement laws in this state and other states with respect to encumbering or surrendering the assets of, or interception of funds payable to, individuals who owe child support and report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.";

Page 6, line 5, remove lines 5 through 16;

Page 7, remove lines 1 through 31;

Page 8, remove lines 1 through 30;

Page 9, remove lines 1 through 31;

Page 10, remove lines 1 through 14;

Page 11, remove lines 30 and 31;

Page 12, remove lines 1 through 6;

Page 13, line 3, replace "8, 14, 15 and 16" with "14 and 15";

Renumber accordingly.



In bill text the following has special meaning
underline denotes added text
~~struck out text~~ denotes deleted text

2007 KS S 273

AUTHOR: Senate Committee on Financial Institutions and Insurance

VERSION: Enacted - Final

VERSION DATE: 05/09/2008

HOUSE Substitute for SENATE BILL No. 273

AN ACT relating to child support enforcement; concerning payments under certain insurance policies; amending K.S.A. 39-759 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The secretary of social and rehabilitation services is authorized to enter into an agreement with any entity that engages in the business of matching information about child support debtors against information about insurance claimants. Any such agreement shall be subject to the provisions of K.S.A. 39-759, and amendments thereto, concerning confidential information. If the entity is a consortium or similar joint venture of two or more states, or if the entity is an agency of the United States, the requirements of K.S.A. 75-5365, and amendments thereto, shall not apply.

(b) Pursuant to an agreement made under subsection (a), the secretary of social and rehabilitation services may disclose information about any individual who owes past due support in a title IV-D case if the support debtor owes at least \$25 in past due support. "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. Section 651 et seq.).

(c) To the extent feasible, the secretary of social and rehabilitation services shall require or provide secure electronic processes for disclosing information about support debtors to any entity conducting matches pursuant to this section and for any insurers disclosing information about claimants to such an entity.

(d) The secretary of social and rehabilitation services shall have the authority to adopt such rules and regulations as may be necessary to administer the provisions of this act.

New Sec. 2. (a) As used in section 1 and 2, and amendments thereto:

(1) "Insurer" means any entity regulated under chapter 40 of the Kansas Statutes Annotated, and amendments thereto, that provides coverage for liability insurance.

(2) "Claimant" means any individual who has submitted a claim for payment under a liability insurance contract.

(b) An insurer shall be required to comply with the provisions of this section only after the secretary of social and rehabilitation services has entered into an agreement pursuant to section 1, and amendments thereto. The secretary of social and rehabilitation services shall make available to insurers information about the data matching process, including instructions for disclosing claimant information.

(c) (1) An insurer shall have the option of receiving request for information about an identified claimant from either the secretary of social and rehabilitation services or from the entity responsible for the data matching pursuant to section 1, and amendments thereto.

(2) An insurer shall respond by disclosing the requested information about the claimant only if the amount of the claim totals \$1,000 or more.

(d) A disclosure required pursuant to subsection (c) shall be made as soon as reasonably possible after the first submission of the claim.

(e) An insurer, including any agent of the insurer, shall not be liable under any state law to any person for any disclosure required or authorized by this section, or for any other action taken in good faith in accordance with this section.

(f) At the insurer's discretion, an insurer may disclose information as provided in this section about a claimant whose aggregate claim is less than \$1,000.

(g) Nothing in sections 1 or 2, and amendments thereto, shall require an insurer to make any payment that is not otherwise required under the contract of insurance. An insurer shall not be assessed any fee by the secretary of social and rehabilitation services or by any entity that has entered into an agreement pursuant to section 1, and amendments thereto.

Sec. 3. K.S.A. 39-759 is hereby amended to read as follows: 39-759. (a) With respect to information obtained by the secretary under K.S.A. 39-758 ~~or K.S.A.~~, 39-7,136, 39-7,143 ~~and~~ or 39-7,150, and amendments thereto, or section 1 and 2, and amendments thereto, any person who willfully requests, obtains or seeks to obtain confidential information except in accordance with any law permitting such disclosure shall be guilty of a class B nonperson misdemeanor. With respect to information obtained by the secretary under K.S.A. 39-758 ~~or K.S.A.~~, 39-7,136, 39-7,143 ~~and~~ or 39-7,150, and amendments thereto, or section 1 and 2, and amendments thereto, any person who willfully requests, obtains or seeks to obtain confidential information under false pretenses or who willfully communicates or seeks to communicate such information to any person except in accordance with any law permitting such disclosure shall be guilty of a severity level 10, nonperson felony. If the offender is an officer or employee of the state or a political subdivision of the state, such officer or employee shall be dismissed from office. If the offender's supervisor does not dismiss the offender, such supervisor shall be dismissed from office. Any violation of this subsection by a IV-D contractor or an agent of a IV-D contractor shall be grounds for termination of the IV-D contract and the contract shall be terminated. The provisions of this subsection shall be a complete defense in any civil action concerning such dismissal, termination of the IV-D contract or termination of a contractor's relationship with an individual offender. When the individual is hired as an officer or employee of the state or a political subdivision or hired by a IV-D contractor, such individual shall be given verbal and written notice of the provisions of this subsection. Such individual shall sign a statement stating that such information was received.

(b) ~~Effective October 1, 1997,~~ The secretary shall safeguard, to the extent required by title IV-D or any other provision of law, any confidential information handled by the secretary. Unauthorized use or disclosure of information relating to proceedings or actions to establish paternity or to establish or

enforce a support obligation is prohibited, except that nothing in this provision shall prevent the secretary or the secretary's designees from using or disclosing information, or authorizing use or disclosure of information, as needed in the administration of the IV-D program or as authorized by title IV-D.

The release of information concerning the location of one party to another party against whom a protective order with respect to the former party has been entered is prohibited. The release of information concerning the location of one party to another party is prohibited if the secretary has reason to believe that the release of such information may result in physical or emotional harm to the former party. For purposes of this subsection, "has reason to believe" means that the former party has claimed good cause for refusing to cooperate in IV-D activities, so long as the claim is pending or has been approved. Such good cause shall relate to one of the following: (1) The child was conceived as a result of incest or rape; (2) there are legal proceedings for adoption of the child pending before a court; (3) the custodial parent is currently being assisted by a public or licensed private social agency in determining whether to keep the child or relinquish the child for adoption; (4) there is documented evidence to support the claim that the child may be physically or emotionally harmed; or (5) there is documented evidence to support the claim that the custodial parent may be physically or emotionally harmed so seriously as to reduce the capacity to adequately care for the child.

(c) The provisions of this section shall be in addition to any other prohibition against further disclosure, remedy or sanction provided by law.

Sec. 4. K.S.A. 39-759 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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Westlaw.

42 U.S.C.A. § 666

Page 1

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Effective: October 1, 2007

United States Code Annotated Currentness

Title 42. The Public Health and Welfare

Chapter 7. Social Security (Refs & Annos)

- ▣ Subchapter IV. Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services (Refs & Annos)

- ▣ Part D. Child Support and Establishment of Paternity (Refs & Annos)

- § 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(1)(A) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before January 1, 1994, if not otherwise subject to withholding under subsection (b) of this section, shall become subject to withholding as provided in subsection (b) of this section if arrearages occur, without the need for a judicial or administrative hearing.

(2) Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part--

(A) any refund of State income tax which would otherwise be payable to a noncustodial parent will be reduced, after notice has been sent to that noncustodial parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such noncustodial parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657 of this title in the case of overdue support assigned to a State pursuant to section 608(a)(3) or 671(a)(17) of this

being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from income due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who--

(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State disbursement unit in accordance with this subsection.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same income.

(8) For purposes of subsection (a) of this section and this subsection, the term "income" means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by noncustodial parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(11) Procedures under which the agency administering the State plan approved under this part may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.

(c) Expedited procedures

The procedures specified in this subsection are the following:

(1) Administrative action by State agency

Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

(A) Genetic testing

To order genetic testing for the purpose of paternity establishment as provided in subsection (a)(5) of this

section.

(B) Financial or other information

To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

(C) Response to State agency request

To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

(D) Access to information contained in certain records

To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

(i) Records of other State and local government agencies, including--

(I) vital statistics (including records of marriage, birth, and divorce);

(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

(III) records concerning real and titled personal property;

(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(V) employment security records;

(VI) records of agencies administering public assistance programs;

(VII) records of the motor vehicle department; and

(VIII) corrections records.

(ii) Certain records held by private entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is sought), consisting of--

(I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by subparagraph (B); and

(II) information (including information on assets and liabilities) on such individuals held by financial institutions.

PROPOSED AMENDMENTS TO HB 1175

- 1 Page 7, line 27, replace “law” with “this Code”
- 2 Page 8, line 23, after “Certain” insert “information contained in”
- 3 Page 8, line 25, after the comma insert “subject to safeguards on privacy and information
- 4 security”
- 5 Page 8, replace lines 26 through 30 with:
 - 6 (a) The names and addresses of such individuals and the names and addresses of the
 - 7 employers of such individuals, as appearing in customer records of public utilities,
 - 8 including cellular and wireless telephone providers, and cable television companies,
 - 9 pursuant to an administrative subpoena; and
- 10 Page 9, remove lines 3 through 6
- 11 Page 10, line 2, replace “Exchange electronic records” with “Upon agreement exchange
- 12 information”
- 13 Renumber accordingly

#4

TESTIMONY OF STEVEN L. SPILDE
CEO, NORTH DAKOTA INSURANCE RESERVE FUND
to the
N.D. HOUSE HUMAN SERVICES COMMITTEE
REGARDING HOUSE BILL NO. 1175, WITH AMENDMENTS

January 28, 2009

Chairman Weisz and Members of the North Dakota House Human Services Committee, my name is Steve Spilde - I am the Chief Executive Officer of the North Dakota Insurance Reserve Fund (NDIRF) and appear today to represent a neutral position regarding House Bill No. 1175, if amendments proposed by the NDIRF are adopted by the Committee

The NDIRF takes no position on HB 1175 with the exception of those sections of the bill dealing with issues of data matching of records possibly involving delinquent child support obligors (sections 8, 10, 12, 16 and 19). With regard to the sections of HB 1175 that concern data matching requirements, the NDIRF offers the attached amendments which essentially provide that those sections of the bill be incorporated into an interim study.

The NDIRF is a "government self-insurance pool" as described in Section 8 of HB 1175.

In our view, issues regarding costs, interruption of claim handling procedures and possible additional liabilities created by mandatory data matching are complex and would benefit from the extended discussion and research possible with an interim study time frame rather than attempting to incorporate amendments "on the fly" during the Legislative Session.

The ND Child Support Enforcement Program has been receptive to incorporating amendments into HB 1175 regarding NDIRF's particular concerns of liability for disclosure of confidential information, and we appreciate that, but still maintain an interim process is more likely to (a) provide an opportunity to focus on keeping the responsibility for child support payments more targeted toward the delinquent child support obligor, given possible advancements in technology since original adoption of section 50-09-08.2 NDCC in 1997; and (b) if necessary, address in a more fully-thought-through way the broader business operation concerns that NDIRF and others have with regard to data match issues.

In summary, the NDIRF proposes that the Committee provide an opportunity for more careful consideration of data match issues and goals, by means of an interim study process, before requiring possibly any business in North Dakota that may cut a check to a delinquent child support obligor to assume the burdens associated with a mandatory data match.

Thank you - I would be pleased to respond to any questions the Committee may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

Prepared by the North Dakota Insurance Reserve Fund

January 28, 2009

Page 5, line 1, after **"SECTION 8."** remove lines 1 through 23 and replace with: "The Legislative Council shall study child support enforcement laws in this state and other states with respect to encumbering or surrendering the assets of, or interception of funds payable to, individuals who owe child support and report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.";

Page 6, line 5, remove lines 5 through 16;

Page 7, remove lines 1 through 31;

Page 8, remove lines 1 through 30;

Page 9, remove lines 1 through 31;

Page 10, remove lines 1 through 14;

Page 11, remove lines 30 and 31;

Page 12, remove lines 1 through 6;

Page 13, line 3, replace "8, 14, 15 and 16" with "14 and 15";

Renumber accordingly.

PROPOSED AMENDMENTS TO HOUSE Bill NO. 1175

Page 1, line 1, replace "two" with "a" and replace "sections" with "section"

Page 5, replace lines 3 through 23 with:

"Child support insurance data match."

1. Before paying a claim of five hundred dollars or more to a claimant for a claim occurring in this state under a contract of insurance issued in this state, an insurer, including a government self-insurance pool, shall either provide the department of human services or its designee with information about the claimant or compare the insurer's information regarding the claimant with information made available to the insurer by the department of human services or its designee. This subsection applies notwithstanding any provision of law making the information confidential.
 - a. An insurer that elects to provide information to the department of human services under this subsection shall provide, as soon as reasonably possible after first submission of the claim but not less than ten days prior to making a payment to a claimant, the claimant's name, address, date of birth, and social security number. Other relevant and available information may be provided if requested by the department of human services.
 - b. An insurer that elects to compare information made available by the department of human services shall notify the department of human services, as soon as reasonably possible after first submission of the claim but not less than ten days prior to making a payment to a claimant who owes or is owed child support, or against whom a child support obligation is sought, the claimant's name, address, date of birth, and social security number. Other relevant and available information may be provided if requested by the department of human services.
 - c. An insurer may comply with this subsection by participating in, and reporting the required claim data to, a centralized claim reporting organization that will conduct a data match of all applicable claims received against the department of human services' files of delinquent child support obligors and report the required data for each matching claimant to the department of human services or its

designee on the insurer's behalf. The department of human services will make files of delinquent child support obligors available to the centralized reporting organization for data matching purposes.

- d. To the extent feasible, the department of human services shall require or provide secure electronic processes for disclosing information about support debtors to the department or its designee under this section and for any insurers disclosing information about claimants to the department or its designee.
2. As used in this section, "claimant" means a resident of this state who is a beneficiary under a life insurance policy or who is an individual who brings a claim against an insured or under an insurance policy for compensation under insurance coverage for bodily injury, uninsured motorist, underinsured motorist, workers' compensation, or personal injury.
3. An insurer that provides claim information to the department of human services under subsection one also shall provide the telephone number of a facsimile machine or electronic mail address to which a lien or demand may be sent by the department of human services under chapter 35-34.
4. A claimant who refuses to provide to an insurer the information required to be submitted to the department of human services under this section may not receive payment on the claim and may not pursue a suit against the insured in this state for the amount of the claim.
5. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith to comply with this section. 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.
6. An insurer that fails to comply with this section is subject to the same liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.
7. Any lien filed under chapter 35-34 against a claim that is reported under this section is subordinate to a pre-existing lien against the claimant arising out of the claim.
8. This section does not apply to a health insurer participating in a data match under section 50-09-37.
9. A government self-insurance pool that complies with this section is not subject to subsection 1 of section 50-09-08.2.

10. An insurer may disclose information as provided in this section about a claimant whose aggregate claim is less than \$500 or whose claim arose outside this state.
11. Nothing in this section shall require an insurer to make a payment that is not otherwise required under the contract of insurance.
12. An insurer shall not be assessed any fee by the department of human services or its designee for providing information claim information under this section.
13. Any claimant information that is exchanged under this section is confidential and may only be used to establish or enforce a child support or medical support obligation, or as otherwise permitted or required by law."

Page 7, line 27, overstrike "law" and insert immediately thereafter "this code"

Page 8, line 23, after "Certain" insert "information contained in"

Page 8, line 25, after the comma insert "subject to safeguards on privacy and information security,"

Page 8, line 26, after "other" insert "requested"

Page 8, line 27, after "relevant" insert "income or asset"

Page 8, line 30, after "companies" insert ", pursuant to an administrative subpoena if requested"

Page 9, line 3, after "is" insert "not subject to paragraph 1 or 2 of this subdivision, section 8 of this Act, or section 50-09-37, and who is"

Page 9, line 6, after "sought" insert "unless the person requests an administrative subpoena"

Page 10, line 2, replace "Exchange electronic records" with "Upon agreement, exchange information"

Page 11, line 22, replace "twenty-four" with "seven business days"

Page 11, line 23, remove "hours"

Page 11, remove lines 30 and 31

Page 12, remove lines 1 through 6

Page 13, line 3, after the second comma insert "and" and remove ", and 16"

Renumber accordingly

#1

Testimony
Engrossed House Bill 1175 – Department Of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
March 4, 2009

Chairman Lee, members of the Senate Human Services Committee, I am James Fleming, Deputy Director and Chief Legal Counsel of the Child Support Enforcement Division of the Department of Human Services. I am here to ask for your favorable consideration of Engrossed House Bill 1175, with the amendments attached to my testimony.

Madame Chairman and members of the committee, based on the work on the bill in the House of Representatives, we anticipate that two areas of the bill will receive the most attention – insurance matching and data matching. As a result, I will quickly go through each section of the bill, and conclude my testimony with comments and proposed amendments in those two areas.

It has been a successful biennium for the Department of Human Services and the child support enforcement program. In 2008, the National Child Support Enforcement Association named North Dakota as program of the year, and our director as the manager of the year. This is in addition to several awards from our federal Office of Child Support Enforcement. Our program performance ranked third in the country, based in part on collecting 75.85% of support in the month in which it is due, and making a collection toward delinquent support in 72.67% of the cases in which there is an arrearage. These collection rates have allowed, for the first time, for the unpaid principal balance of arrears in IV-D cases to decline. Total collections for Calendar Year 2008 were an all-time record of \$122,734,000, of which about 90% is paid to families.

However, there is still more work to do to achieve our goal of having a world-class program that produces reliable collections for families. At the end of December 2008, we had 4,888 cases in our caseload in which we were actively trying to locate an obligor's address, employer, or assets. Obtaining these pieces of information is critical to requesting a court order for child support at an appropriate level and to enforcing the order.

For comparison, at the end of the federal fiscal year, we had only 89 children in our caseload needing paternity to be established (out of 24,269 children in the IV-D caseload who were born out of wedlock); 4,746 court orders to establish (out of a total IV-D caseload of 36,918); and 7,862 cases with arrears in which there was no payment in the last year (out of a total IV-D arrears caseload of 28,772).

Given the work yet to do and the large number of obligors we are trying to locate, several provisions in House Bill 1175 would improve our program's access to information, in addition to internal efficiencies.

Section One: This is a technical change to remove language that is moot based on legislation enacted during the 2007 Legislative Session.

Section Two: This section is proposed to revise and clarify terminology. Technically, a contempt proceeding is not a method of punishing a person. Rather, the goal of such a proceeding is to compel a person to do something that he or she already has a duty to do.

In the last few years, we have increased our actions against employers who either do not withhold money as required in an income withholding order, or who withhold the money from the obligor but illegally keep the money without paying it to the State Disbursement Unit (SDU). In applying the provisions in current law that are proposed to be amended in the bill, it was determined that some clarification would be helpful to indicate that the same penalties and remedies apply in both contexts – failure to withhold income and failure to deliver income that has been withheld.

Section Three: A recent North Dakota Supreme Court decision held that a person could be prosecuted for willfully failing to pay child support that is past due, but noted that the statute was not as clear as it could be. State v. Nastrom, 2008 ND 110, 750 N.W.2d 432. This section of the bill is proposed to clarify that a person can be prosecuted for willfully failing to pay child support arrears (which is not a debt that is subject to any statute of limitations).

Section Four: This section of the bill recognizes that since the Department has taken over issuing income withholding orders in all child support cases, there is no longer a need for the clerks of court to receive this information. The court administrator's office is aware of this proposed amendment.

Section Five: In 2003, the Legislature passed a law to address the following scenario:

Dad owes Mom several thousand dollars of past-due child support.
A few months ago, custody of the minor children was changed from

Mom to Dad. Mom now owes Dad child support on behalf of the children but also has accumulated arrears. In other words, Dad owes arrears to Mom and Mom owes arrears to Dad.

The legislative history of the 2003 legislation indicates that an offset of the arrears in the example is a convenient and efficient way of reducing both parents' arrears to each other (assuming none of the arrears are assigned to the State).

However, as applied to the current and future support that is owed to the children, the legislative history also indicates:

An offset should not deprive children of the current support they need for food, clothes, shelter, and other essentials

Therefore, except as provided in subsection 4 of this section, an offset of child support arrears against child support that is due in the current month, or that will be due in a future month, is not permitted.

After balancing the interests involved of providing support for the children's current needs with the impact of enforcing an arrearage that is owed by a parent who currently has custody of the children, the 2003 Legislature enacted the following language:

An obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the court orders the offset as a method of satisfying an overpayment of child support

that results from the establishment or reduction of a child support obligation.

N.D.C.C. § 14-09-09.33(5).

Recently, the North Dakota Supreme Court upheld an offset of current support with arrears, despite the language above, based on language in N.D.C.C. § 14-09-09.24 authorizing parents to enter into a written agreement for assuring the regular payment of child support in lieu of income withholding, and language in N.D.C.C. § 14-09-09.30 regarding the monthly amount due for purposes of income withholding. Walberg v. Walberg, 2008 ND 92, 748 N.W.2d 702.

We believe that the court's decision, in attempting to harmonize the multiple statutes involved, reached a conclusion that is inconsistent with the intent of the Legislature and jeopardizes the right of children to obtain current support from an obligor. Thus, this section of the bill would clarify the interaction of these statutes and fulfill the intent of the provision enacted in 2003.

Section Six: The change in the first part of this section is to give courts and the SDU the authority to stop collecting support from an obligor and refund any collections if the obligee is deceased and heirs or next of kin cannot be found. Currently, our program would continue to attempt to collect the support from the obligor, make best efforts to find an heir or next of kin. If after 3 years we are unable to find an heir or next of kin, we turn over the collections to the Unclaimed Property Division.

The second part of this section updates a duplicative reference to the clerks of court and the child support program, consistent with the proposed change in **Section Four**.

Section Seven: Currently, a person who illegally hunts, traps, or fishes when the person's privileges have been suspended by a court is guilty of a Class A misdemeanor, but a person who illegally hunts, traps, or fishes when the person's privileges have been suspended by the child support enforcement program is guilty of only a Class B misdemeanor (the penalty that applies to general game violations). The amendment to existing law is proposed for the sake of consistency.

Section Eight: As mentioned earlier, we have increased our enforcement activities regarding employers who do not honor their legal duties in the child support area. One common area is reporting of new hires, where we are authorized to assess a civil penalty of \$20 per failure to report an employee. The current process of collecting this penalty has proven slightly confusing and cumbersome in application because it involves a third party (the employer) in a contempt proceeding in a court case between the two parents. We believe it would be simpler for all if we simply brought a separate legal action against the employer to collect any civil penalty that is imposed for failing to report new hires.

Section Nine: Through our High Intensity Enforcement Unit, we are pursuing more liens against property in the hands of third parties. Currently, the law only requires that the lien be filed with the Secretary of State or the county recorder of the county where the property is located and provided to the obligor. However, as a practical matter, we need to send the third party a copy of the lien for them to know about it. The

new language would reduce the paperwork in this process and authorize the filing of our liens directly with the third party who possesses the property. This issue arises quite often when placing liens on capital distributions from utility cooperatives, which can often be for small amounts that are not subject to other claims.

Section Ten: This section relates to the same issue in **Section Six** when an obligee is deceased and no heirs or next of kin can be found. This section authorizes the records of the debt to be removed from the state's official payment records so future collection actions can be avoided.

Section Eleven: The law proposed to be amended in this section was enacted in response to numerous mandates contained in the federal welfare reform act of 1996. These mandates included mandatory data sharing agreements with financial institutions, authority to issue administrative subpoenas, and the right to access (including automated access) records of government entities and public utilities. In large part, the language in this section follows the language in federal law, to ensure compliance with the federal mandates and preserve funding for the Temporary Assistance to Needy Families and Child Support Enforcement programs.

The parts of the original law that are not proposed to be amended in House Bill 1175, and will remain in effect, provide strong immunity protection for entities that cooperate with child support and require that any confidentiality be preserved. We have a long history of accessing and protecting personal information. We take our access to information very seriously, and only use the information we obtain for program purposes or as otherwise required by law. The IRS, which has a most intensive

ongoing security oversight process, has long accepted the safeguards that the Department and the Information Technology Department have had in place, as evidenced by their program review last summer.

As we shift more attention to locating obligors and their employers or assets, this law is becoming more important to our operations and to improving our collection efforts. Our experience in applying this law has also taught us ways in which we feel the law can be improved.

This section of the bill was significantly amended in the House of Representatives, and I will discuss those changes later in this testimony.

Section Twelve: This section is proposed to account for the fact that federally-funded child support programs are now operated by some Indian tribes as well as states.

Section Thirteen: This section provides for a protest period for any collections received under **Section Fourteen** of the bill.

Section Fourteen: Common child support enforcement tools for North Dakota and other states today include intercepting federal and state tax refunds, insurance claims, and lottery winnings. Other states, particularly Colorado, have had similar success in intercepting other gambling winnings. Under this section, a gaming operator who is subject to North Dakota law (which excludes tribal casinos) would be required to report all winnings for which an IRS W-2G form is required prior to making a payment.

This connection to the IRS form is important; a W-2G is only required for bingo winnings in excess of \$1,200 and other winnings, such as pari-mutuel winnings, of \$600. Based on the experience of other states and a contact we have had with the charitable gaming industry in North Dakota, we believe this allows for the number of reported winnings to be very manageable for the gaming operator. We believe we can provide a web-based tool for the gaming operator that will allow it to obtain the needed information at whatever time of the day or night the operator may be making a payment to the winner. The fiscal note on the bill identifies the cost of computer programming to implement the web-based interface.

Under **Section Seventeen**, the effective date of this section and the protest period in **Section Thirteen** would be delayed until July 1, 2010, to give the Department the opportunity to work with the gaming industry on the details of the match process.

Section Fifteen: This section of the bill clarifies that the Department's authority to write off uncollectible child support arrears includes medical support arrears that stem from a Medicaid assignment.

Section Sixteen: The 2005 Session Law that is proposed to be amended in this section is the Uniform Parentage Act. The Department supported the enactment of the uniform law because it provided greater guidance in many areas. However, the transition clause that is proposed to be amended was recently interpreted by the North Dakota Supreme Court in an unexpected way, which results in the prior, more ambiguous law being applied to more cases. Gerhardt v. C.K., 2008 ND 136, 751 N.W.2d 702. The "old" paternity act is no longer widely available. As amended, the

date of a complaint or motion to disestablish paternity would govern which law applies, even if the paternity action occurred earlier.

Section Seventeen: As discussed earlier in my testimony, this section delays the effective date of the reporting of gaming winnings (**Sections Thirteen and Fourteen**) until July 1, 2010, to give the Department the opportunity to work with the affected industries on the details of the new processes.

Amendments: Attached to my testimony is a set of amendments that the Department would request be added to the bill. These amendments pertain to issues that were raised in the House of Representatives during its consideration of the bill, and led to the removal of some provisions from the original bill that the Department feels continue to have merit. The amendments cover two subjects: insurance matching and data matching.

Insurance Matching: As indicated at the beginning of my testimony, improving our access to information for locating parents and their income or assets is a key to improving the collection of support for children. Nationally, the Child Support Lien Network (a multi-state partnership hosted by Rhode Island) and the federal Office of Child Support Enforcement each conduct a match between insurance claims and delinquent obligors.

In North Dakota, participation by insurance companies is currently voluntary, and we appreciate the cooperation of the insurance companies who are choosing to participate. Just last week, we learned that the State Farm insurance group is now participating in the federal match, and

we have already received our first match. However, one of the concerns expressed by some companies at a national level is that they would feel more protected from lawsuits if the process was mandated. For this reason, some will not participate unless it is mandated, which has led to the proposed language in the original bill and the attached proposed amendments.

At the present time, we would plan to implement the match process through the existing match processes that are in place with the Child Support Lien Network or the Office of Child Support Enforcement. Many insurers today are participating in these networks through a centralized claims processor called ISO, and the amendments confirm that this existing service will suffice under the proposed match process.

Under the amendments, the effective date of the insurance match would be delayed until July 1, 2010, to give the Department the opportunity to continue working with the insurance industry on the details of the match process. The current voluntary process would remain in effect until that time. In addition, the sanctions against an insurer for failing to report a claim are delayed until July 1, 2011, to give insurers and their staff an opportunity to become familiar with the match process.

Since the original bill was introduced, the Department has worked hard with representatives of the insurance industry on agreeable amendments to address industry concerns. Unfortunately, consensus could not be reached on all points before the House was required to act on the bill, and the match provisions were removed. However, we believe that the remaining disagreements between the Department and the insurance

industry are relatively minor, and that the proposed amendments are a workable solution that should be added to the bill.

Data Matching: Under current law, the Department has authority to access information from government agencies, financial institutions, and public utilities, and can also issue administrative subpoenas for information to any person who is believed to possess information regarding obligors or their income or assets. The parts of the law regarding information exchange with government agencies and financial institutions have been used since the law was first passed in 1997. However, the provisions regarding public utility matches have only begun being implemented in the last biennium. In implementing this new area of data matching, some shortcomings and ambiguities in current law have been identified.

For example, in terms of obtaining information, a lot has changed in the 12 years since the law was first passed. Instead of a subpoena in a specific case on a one-time basis, a far more efficient way to obtain and compare information today is a data sharing agreement where an entire list of individuals is compared to our list of child support obligors on an ongoing, periodic basis using a computerized process. One entity receiving a request from our program to enter into a data sharing agreement responded by claiming that an administrative subpoena was the exclusive way that we could obtain the access to information provided in subdivision 1(g) of the law. We disagree under current law, but feel a clarification would be helpful.

Another recent example is a data match with a utility cooperative. The company was very willing to work with us, but current law expressly

authorizes only that the name and address of the customer and the customer's employer be provided (page 8, line 1 of the bill); what is not as clear is the authority to share the customer's social security number or asset information. However, the law allows us to obtain name and address information regarding obligors, which we can only do with a reasonable degree of certainty if we match based on social security numbers. Rather than imply the authority to exchange all relevant information with utilities, we propose the clarification in the bill.

In the original bill, and in the Department's proposed amendments, we propose similar authority to obtain records of any person that we become aware of who possesses information about obligors. Except for administrative subpoenas, the authority in current law to obtain access to information is limited to government agencies, financial institutions, and public utilities. In reality, there are other sources of information regarding multiple obligors. A recent example would be the class action lawsuit from the train derailment in Minot. If this provision had been in place, we may have been able to match the potential claimants under the lawsuit to determine who was obtaining a settlement, and apply some of those funds to the care of their children.

Finally, identity theft can be a concern for our data sharing partners. Current law gives Child Support Enforcement the ability to obtain information from many entities. But some would prefer to receive the information from us and conduct their own match. As long as the entity agrees to honor state law requiring it to keep the information confidential and not use it for purposes other than our program, we would like the flexibility of accommodating such a request and allow the entity to do the match and report the outcome to us (Page 9, lines 5 through 9).

In the House, the Department supported amendments to this section. One amendment clarified that our automated access to records of a public utility is "subject to safeguards on privacy and information security." We would not seek to obtain automated access to the computer system of a public utility if the access could not be secure and limited to only the records authorized by law to be shared with Child Support Enforcement. Instead, we would work with the entity to form an agreement to exchange data files without the automated access. Another amendment expressly limited the reach of the statute to the portion of public utility records containing the information that would be useful to the Department.

However, an amendment in the House that does pose a concern is the provision that not only requires an administrative subpoena for information in public utility records, even if the utility is willing to cooperate, but also significantly limits the pieces of information that can be obtained through the subpoena (page 8, lines 1 through 6). Instead of authority to conduct certain data matches and the general power to obtain information through administrative subpoena, these amendments actually would narrow the information that the Department currently can obtain.

In conclusion, on this issue current law since 1997 has authorized the Department to obtain information through specific data exchanges and general authority to issue administrative subpoenas. The goal of the original bill and the attached amendments is to clarify the existing subpoena power, expand the ability to use data exchanges in lieu of a subpoena, and create a third alternative under which the person in

possession of the information can conduct its own data match using information supplied by the Department. We believe that a one-size fits all method is not required; instead, we propose that either the Department or the third party can conduct the data match, with an administrative subpoena being reserved for times when the person is not willing to use either option but the information is needed.

Madame Chairman, this gives an overview of the engrossed bill and the amendments requested by the Department. I would be glad to respond to any questions the committee may have.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1175

Page 1, line 1, after "chapter" insert "26.1 and a new section to chapter"

Page 4, after line 27, insert:

"SECTION 8. A new section to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Child support insurance data match.

1. Before paying a claim of five hundred dollars or more to a claimant for a claim occurring in this state under a contract of insurance issued in this state, an insurer, including a government self-insurance pool, shall either provide the department of human services or its designee with information about the claimant or compare the insurer's information regarding the claimant with information made available to the insurer by the department of human services or its designee. This subsection applies notwithstanding any provision of law making the information confidential.
 - a. An insurer that elects to provide information to the department of human services under this subsection shall provide, as soon as reasonably possible after first submission of the claim but not less than ten days prior to making a payment to a claimant, the claimant's name, address, date of birth, and social security number. Other relevant and available information may be provided if requested by the department of human services.
 - b. An insurer that elects to compare information made available by the department of human services shall notify the department of human services, as soon as reasonably possible after first submission of the claim but not less than ten days prior to making a payment to a claimant who owes or is owed child support, or against whom a child support obligation is sought, the claimant's name, address, date of birth, and social security number. Other relevant and available information may be provided if requested by the department of human services.
 - c. An insurer may comply with this subsection by participating in, and reporting the required claim data to, a centralized claim reporting organization that will conduct a data match of all applicable claims

received against the department of human services' files of delinquent child support obligors and report the required data for each matching claimant to the department of human services or its designee on the insurer's behalf. The department of human services will make files of delinquent child support obligors available to the centralized reporting organization for data matching purposes.

d. To the extent feasible, the department of human services shall require or provide secure electronic processes for disclosing information about support debtors to the department or its designee under this section and for any insurers disclosing information about claimants to the department or its designee.

2. As used in this section, "claimant" means a resident of this state who is a beneficiary under a life insurance policy or who is an individual who brings a claim against an insured or under an insurance policy for compensation under insurance coverage for bodily injury, uninsured motorist, underinsured motorist, workers' compensation, or personal injury.

3. An insurer that provides claim information to the department of human services under subsection one also shall provide the telephone number of a facsimile machine or electronic mail address to which a lien or demand may be sent by the department of human services under chapter 35-34.

4. A claimant who refuses to provide to an insurer the information required to be submitted to the department of human services under this section may not receive payment on the claim and may not pursue a suit against the insured in this state for the amount of the claim.

5. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith to comply with this section. 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.

6. An insurer that fails to comply with this section after June 30, 2011, is subject to the same liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.

7. Any lien filed under chapter 35-34 against a claim that is reported under this section is subordinate to a pre-existing lien against the claimant arising out of the claim.

8. This section does not apply to a health insurer participating in a data match under section 50-09-37.

9. A government self-insurance pool that complies with this section is not subject to subsection 1 of section 50-09-08.2.
10. An insurer may disclose information as provided in this section about a claimant whose aggregate claim is less than \$500 or whose claim arose outside this state.
11. Nothing in this section shall require an insurer to make a payment that is not otherwise required under the contract of insurance.
12. An insurer shall not be assessed any fee by the department of human services or its designee for providing information claim information under this section.
13. Any claimant information that is exchanged under this section is confidential and may only be used to establish or enforce a child support or medical support obligation, or as otherwise permitted or required by law."

Page 8, line 1, remove "and" and after "numbers" insert ", and other requested relevant income or asset information"

Page 8, line 6, after "subpoena" insert "if requested" and overstrike "and"

Page 8, line 8, after the semicolon insert "and"

Page 8, after line 8, insert:

- "(3) Records held by any person doing business in this state who is not subject to paragraph 1 or 2 of this subdivision, section 8 of this Act, or section 50-09-37, and who is believed to possess information regarding individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, unless the person requests an administrative subpoena."

Page 11, line 29, after "Sections" replace "13 and 14" with "8, 14, and 15"

Renumber accordingly

March 3, 2009

Chairman Lee, Members of the Committee:

My name is Jim Goetz. I am the Chairman and CEO of Security First Bank of North Dakota, which has offices in Almont, Center and New Salem as well as in Bismarck and Mandan.

I am here in opposition to certain sections of Engrossed House Bill 1175. While I believe we must do what we can to make certain child support payments are collected, certain provisions in this Bill go much too far.

I don't believe any of the employees of the Department of Human Services go to work without getting paid, yet this bill requires banks to provide information to the Department without being paid. The changes proposed on page 6, lines 14-17, provide that the Department would not have to reimburse any costs incurred "by a financial institution that has not entered into an agreement under subdivision h nor costs incurred by any person that reflects the differences between responding to a subpoena and providing information under subdivision g or k;" The amendment proposed on lines 14 through 17 should be struck from this bill.

The last time I checked, the cost of providing this information is substantial. The software costs approximately \$1,800.00, with annual maintenance costs of \$360.00. And this doesn't count the additional hourly wages a bank would have to pay its staff to compile and submit the data. These are the actual reasonable out-of-pocket costs for banks that the Department does not want to reimburse.

For banks that the Department has coerced into "voluntarily" entering into the agreements provided under subdivision h starting on line 9 on page 8, the Department has advised me it will only pay a bank \$100.00 per year for providing the required information. This doesn't even come close to covering the banks' reasonable costs noted above. Consequently, this is in reality another hidden tax imposed upon the banking industry.

As a matter of principle, our bank has refused to pay this hidden tax, and our bank has refused to enter such an agreement. The language in lines 14 through 17 on page 6 is simply an attempt by the Department to cause our

bank to work for them and to provide services for them without even being reimbursed for our out of pocket costs.

You wouldn't expect someone to come and paint your house for free, yet the Department expects banks to buy software, to pay the ongoing annual maintenance on that software, to pay staff to compile data, and to pay the costs of submitting that data, all without reimbursement for their out of pocket costs.

The change proposed on page 6, line 31, is equally egregious. It allows the Department to demand confidential information from an entity without even a subpoena, but entirely on its own volition. The Department claims there would still be a check and balance in this process because the person or business could challenge the Department's order in court. However, how many individuals and small businesses could afford to spend thousands of dollars in legal fees to challenge a Department of Human Services order in court? How many of you would relish paying legal fees and going through the hassle of fighting the Department with its State-paid lawyers?

The sensitive and confidential information held by banks concerning their customers should be so protected that it can only be accessed by the Department through a subpoena.

The changes noted above proposed in this Bill are simply overreaching and reminiscent of George Orwell's "Big Brother". They provide a foot in the door for the state to further intrude into the private records of private entities. They provide another opportunity for the state to continue to impose hidden taxes on small businesses by forcing them to provide services to the state for free, or at levels of reimbursement that are well below their out of pocket costs to providing those services.

In summary, the amendments noted above go much too far, and should be deleted from HB 1175. I have included proposed amendments below to delete these provisions.

Chairman Lee, and Committee members, thank you very much for your time and consideration. I would be pleased to answer any questions.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1175

On page 6, lines 14, remove “and not to include any costs incurred by a financial institution that”

On page 6, remove lines 15-17

On page 6, line 31, remove “in addition to or in lieu of a subpoena,”

On page 8, line 1, remove the overstrike over “~~and~~” and remove “, and social security numbers”

#3

TESTIMONY IN OPPOSITION TO HB 1175

Senate Human Services Committee

March 4, 2009

Chair Lee and Members of the Senate Human Services Committee.

My name is Pat Ward and I represent the Association of North Dakota Insurers and the Property and Casualty Insurance Association of America in opposition to any new amendments to this bill which would require a mandatory data match system for insurers to catch delinquent child support obligors.

We were provided a copy of the original draft pre-filed bill a few weeks before the session started. Since that time members of our association, including Dale Haake of Nodak Mutual in Fargo (who is here today to testify), and myself, have met with Mr. Fleming to try to draft suitable amendments. Throughout that time I have circulated the initial bill draft and proposed amendments at various stages to domestic insurance companies in North Dakota and other companies around the country. The House committee chose to strip the bill of section 8. Our concern is that this is a work in progress and not a finished product and we should be given the interim to work out an acceptable provision. This should go forward in the future as a stand alone bill and not part of a larger package of department legislation.

The purpose of the original section 8 is to somehow alert child support enforcement agencies that a person who is delinquent on their child support has a pending insurance claim and may be coming into some money. The problem is how to achieve this desired goal with a minimum amount of disruption and expense for all involved.

We are opposed to mandatory approaches such as were taken in Massachusetts and Oklahoma. What we do support are voluntary programs where the child support enforcement agency can contract for data matching services from one of the two vendors providing such services, the Federal Office of Child Support Enforcement (OCSE) or the Child Support Lien Network (CSLN).

We could get behind enabling legislation which would allow companies to participate in a voluntary way to match data. Such legislation allows the child support agency to enter into data matching agreements, but does not mandate insurer participation, and does not allow fees to be charged insurers by the child support agency or the vendor. Some companies are already doing so, others are just not ready.

We see a potential problem as well in settling claims after you have told the person in arrears on child support that the insurer is required to provide info to

Human Services. It could well happen the settlement amount you might have agreed upon increases by the amount that they are behind in their payments. This could cause unnecessary delay in settlements or break settlement talks completely. This seems like a plan to throw innocent dollars after nickels.

At some point I could envision the plaintiff bar challenging this if it becomes law as it would delay their getting their money as well or possibly bar a claim altogether. What would this do to settlements on the courthouse steps or where time is of the essence?

We believe that a study of this particular section or a working group of interested entities would be the appropriate approach. We would suggest that section 8 be either left out or replaced with language requiring a study of how best to accomplish this goal but mandate that a voluntary system be created. There should be discussion of how to comply and appropriate penalties for noncompliance. The practical concerns could be addressed in better detail.

We urge you not to amend this bill as requested by Human Services but to leave the issue of such legislation for next session.

IN OPPOSITION TO HB 1175

Dale Haake for Nodak Mutual Insurance

Chair Lee and members of the Senate Human Services Committee.

My name is Dale Haake, and I represent Nodak Mutual Insurance Company.

I am here today to speak in opposition to Human Services' request to reintroduce Section 8 back into this bill.

This bill was first made available for review about two weeks prior to the start of this legislative session. Upon my review of it, I immediately noticed that Section 8 contained a great many things which concerned me. I contacted Mr. Fleming and made arrangements to meet with him to see if we could resolve these concerns prior to the bill being introduced. Mr. Fleming was very willing to meet, which we did, and many changes were made. However, upon continued study, more and more things began to give concern. Mr. Fleming has continued to show a willingness to discuss these matters and has continued to work with the insurance carriers on their concerns, but unfortunately issues still remain.

I am the Casualty Claims Manager for Nodak Mutual Insurance, and my company has participated in the Delinquent Child Support Data Match on a voluntary basis for about two years now. During that time we have had four (4) positive matches from the many hundreds of submissions we have made to the data base.

I have no authority to speak for the industry as a whole, but I can state that Nodak Mutual is supportive of the concepts of the data match process, but we feel we must have a statute which is workable and equitable for both Human Services and the insurance industry. Section 8, if reintroduced into this bill, would fall short of being either workable or equitable for the insurance industry, and would put great requirements on the insurance carriers for what has proven to be very limited returns. Nodak Mutual remains very willing to continue its voluntary participation in this program, and would be very willing to work as part of a study group so that a more acceptable bill might be introduced next session.

I encourage this committee to either leave Section 8 out of this bill and allow insurance carriers to continue to participate in the data match on a voluntary basis, or replace Section 8 with a requirement for a study of how such a system can be best implemented in a workable and equitable manner.

#15

TESTIMONY OF STEVE SPILDE
CEO, NORTH DAKOTA INSURANCE RESERVE FUND
to the
N.D. SENATE HUMAN SERVICES COMMITTEE
REGARDING HOUSE BILL NO. 1175

March 4, 2009

Chairperson Lee and Members of the Senate Human Services Committee, my name is Steve Spilde - I am the Chief Executive Officer of the North Dakota Insurance Reserve Fund (NDIRF) and appear today to **oppose** amendments proposed by the ND Department of Human Services (NDDHS) to HB 1175. The NDIRF is a "government self-insurance pool" as described in Section 8 of the amendments proposed by NDDHS.

NDIRF takes no position on HB 1175 with the exception of those sections of the amendments proffered by the NDDHS dealing with issues of data matching of records possibly involving delinquent child support obligors. With regard to data matching requirements, the NDIRF respectfully suggests that NDDHS meet and confer with potentially affected entities in the next legislative interim to

determine whether agreement regarding scope and methodology of data matching for child support enforcement purposes is possible.

In our view, issues regarding costs, interruption of claim handling procedures and possible additional liabilities created by mandatory data matching are complex and would benefit from the extended discussion and research possible with a legislative interim review rather than attempting to incorporate amendments “on the fly” during the legislative session.

The NDDHS has been receptive to drafting amendments into HB 1175 regarding NDIRF’s particular concerns of liability for disclosure of confidential information but we maintain that an interim process is more likely to (a) provide an opportunity to focus on keeping the responsibility for child support payments more targeted toward the delinquent child support obligor, given possible advancements in technology since original adoption of section 50-09-08.2 NDCC in 1997; and (b) if necessary, address in a more fully-thought-through way the

broader cost and business operation concerns that NDIRF and others have with regard to data match issues.

In summary, the NDIRF proposes that the Committee provide an opportunity for more careful consideration of data match issues and goals, by means of an interim “meet and confer” process, before requiring possibly any business in North Dakota that may cut a check for any reason to a delinquent child support obligor to assume the burdens associated with a mandatory data match.

Thank you - I would be pleased to respond to any questions the Committee may have.

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Prepared for Senator Judy Lee
By the North Dakota
Department of Human Services
March 6, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE Bill NO. 1175

Page 1, line 1, after "chapter" insert "26.1 and a new section to chapter"

Page 1, line 9, after the first semicolon insert "to provide for a task force;"

Page 4, after line 27, insert:

"SECTION 8. A new section to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Child support insurance data match. Before paying a claim under a contract of insurance issued in this state, an insurer or government self-insurance pool may exchange information about the claimant with the department of human services or its designee. This section applies notwithstanding any provision of law making the information confidential. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith under this section. 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, line 10, remove "on a one-time or ongoing basis"

Page 8, line 1, remove "and" and after "numbers" insert ", and other requested relevant income or asset information"

Page 8, line 6, after "subpoena" insert "if requested"

Page 11, after line 28, insert:

"SECTION 18. CHILD SUPPORT ENFORCEMENT TASK FORCE. The department of human services shall convene a child support enforcement task force to study the interaction of the business community and the child support

enforcement program. The department shall extend invitations to representatives from the financial and insurance industries, employers, public utilities, and other business interests. The study must include strategies for encouraging voluntary participation in electronic data matches, the feasibility and desirability of mandatory data matches or mandatory electronic transfer of information, the identification of potential sources of income and asset information regarding child support obligors, creation of a lien registry for property owned by a delinquent child support obligor, and the development of procedures for conducting data matches that are secure and limited to the information needed to assist in the establishment and enforcement of child support and medical support orders. The findings and recommendations of the task force, together with any legislation required to implement the recommendations, must be presented by the department of human services to the Sixty-second Legislative Assembly."

Renumber accordingly