

2019 HOUSE HUMAN SERVICES COMMITTEE

HB 1371

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1371
1/22/2019
31204

- Subcommittee
 Conference Committee

Elaine Stromme by Risa Bergquist

Explanation or reason for introduction of bill/resolution:

Relating to the new hire registry for child support; to provide a penalty; and to provide an effective date.

Minutes:

Attachments 1-4

Chairman Weisz: Called the hearing to order.

Representative C. Johnson: (see attachment 1)

Chairman Weisz: Any further questions?

1:00-4:35 Michelle Rudland: (see attachment 2)

Chairman Weisz: Further questions?

5:00-10:35 Jim Flemming, Director of the Child Support Division of the Department of Human Services. (see attachment 3) I have been contacted by two different Representatives about what we can do to do better with enforcing child support. I did include a "Hog House" amendment; page 3 of attachment 3, that will do away with the other language in the bill and clarify the difference between employee and contractor. Whether the committee decided it recommend Do Pass or Do Not Pass I would recommend that they adopt this amendment. The original bill shouldn't move forward because we need this clear distinction. The department does urge you to give it a Do Pass as amended. There is 250 million dollars just in the cases assigned to us that is owed in North Dakota. If you add the cases that we're not enforcing it climbs to almost 350 million dollars. There's a lot of unpaid child support in North Dakota. 25% of support that current support that accrue every month goes uncollected and you appropriate over 25 million dollars every biennium to our program to try to collect this child support.

Chairman Weisz: Earlier we heard about concern about the self-employed farmer or rancher and this really doesn't address that at all because they don't get a 1099.

Mr. Flemming: That is correct, that is a good example of what happens when child support isn't paid, the bill tries to resolve that problem in a different way. We already have the authority to ask a court to compel a person to set up a deposit account.

12:00 Representative Porter: Inside the world of technology I can't believe that there isn't a way that you can get this kind of information. For you to ask the employer to do more for free on your behalf, I appreciate the problem but employers are already spending a lot of money on ITD.

Mr. Flemming: We need to be straight up with the legislatures and say this would help, I can tell you that we have explored the technology and it doesn't exist because of the way the tax department stores that information. The other part of this is the timing, if it's a onetime thing the person will have moved on to another "gig" before we catch up to them. That's why we need to link it to "new hire reporting".

Representative Porter: The other places that employers are already mandated to talk with is job service and work force safety to prove that we aren't just trying to get out of paying unemployment benefits. Isn't there a way inside of that system?

15:15 Mr. Flemming: To my understanding those entities would have record of those that are employees, but I am not aware of independent contractors being reported to those entities.

Representative Porter: If I hire someone and I don't know for sure that I am going to reach the threshold to file a 1099, and let's say they work for me three different times a year and each time it's a few hundred dollars and at some point it triggers the need for that 1099, what's the penalty back to me as an employer for failed to report?

Mr. Flemming: It would be \$25 for each miss. Per employee, so at the point of your retention of that worker as an IC, when they cross the \$600 threshold if they are not reported it would be a \$25 fine. The penalties are only imposed if it's an ongoing problem with a particular employer.

17:45 Representative Rohr: You represented in your testimony that 25% are uncollected? So what % is employee and what % is IC?

Mr. Flemming: We don't know that because we don't know if they are an employee or an IC.

Representative Skroch: I visited with a person that works with Work Force Safety and Insurance, we spoke about "gig" employees and it was explained to me that even if that person only makes \$100 it's still mandatory to report those individuals in order to gather that information for collection of child care. Are you aware of that and do you use that?

Mr. Flemming: New hire reporting of employees today is mandated for every employee what this bill refers to the those that are independent contractors.

Representative Schneider: I really like Ms. Rudland's testimony because I can see where self-employment would be a real issue. Can you get us the part of the administrative code that allows you to already implement a lump sum account from a self-employed person and can you help Ms. Rudland with that if you already have the tools to do it?

Mr. Flemming: Yes, I can get you the code, it requires the court to say yes to child support if we ask. With regard to Ms. Rudland, how we approach the case with her obligor is confidential under state law and her permission is not enough to discuss the case with you. Generally, whenever a case reaches my eyes, if there is something that hasn't yet been applied to that case that can be, we do it.

Representative Skroch: Is this case unique or limited or is it a problem with self-employed persons?

Mr. Flemming: The example in her testimony would fall into a category where we know where they are we know what they are doing and we know that they are self-employed. There's a bigger category

of self-employed that does not farm and they work for a number of different people on a number of different jobs. That is the group this bill addresses. This bill would help us be proactive instead of retroactive.

Chairman Weisz: Further questions? Further testimony? Any opposition?

23:55-25:45 Matt Gardner, Greater North Dakota Chamber (GNDC) (see attachment 4)

Chairman Weisz: Does that amendment make a difference to you as far as clarifying the differences between employer and IC?

Mr. Gardner: Let me clarify what a IC is for the bill but it thinks what a IC is, it still blurs those lines.

Chairman Weisz: Further question? Further opposition?

Ron Ness, President of North Dakota Petroleum Council: The real issue is that this bill doesn't resolve the constituent's complaint and there is a fair amount of confusion between the contractor and the individual and where that reporting period would be. We employ 10s of 1000s of contractors who may have individual agreements with other individuals that are also independent contractors and this ultimately falls back on the employers that hires the first contractor that may be sub-contractor to do various jobs.

Chairman Weisz: Any further questions? Any further testimony? We will close this hearing for HB 1371.

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1371
2/5/2019
32179

- Subcommittee
 Conference Committee

Committee Clerk Signature Nicole Klamann

Explanation or reason for introduction of bill/resolution:

Relating to the new hire registry for child support, to provide a penalty to provide an effective date

Minutes:

Chairman Weisz: opened meeting

Representative Todd Porter: Motion to Amend
Vice Chair Karen Rohr: Second

Voice Vote: Motion carries to adopt amendment

Rep. Porter: It goes back to the employer group. I have mixed emotions on this requirement. Potentially money that is out there for someone and their obligation. Why can't the department get the info from the Tax Dept.? Why does it have to be on the employer backed with a penalty fee. By the time you add up all the things employers have to do between Job Service and Workforce Safety, existing child support requirements, automatic deductions, making payments to the system. You wonder who is doing all the work? It's the employers.

Vice Chair Rohr: I question what it does with the relationship with employee and employer.

Chairman Weisz: My concern is the 1099- that independent could be hiring others. The only thing the 1099 is going to show is the payment to the contractor.

Representative Mary Schneider: The principal underlying is important. The testimony, although meaningful, didn't match up with the bill.

Rep. Porter: The issue of the annual payment, they already have the ability to work this out. His proposed amendment was to hog house the bill, and go after the 1099 income because the purpose of the bill, they already have the ability to do. He was wanting to expand and see what the Dept. can do inside of the 1099 realm.

Chairman Weisz: The bill or the amendment doesn't really address, per the testimony of the farmer. They sell cattle or grain once a year, and they are not making payments, the bill doesn't address that. They do not issue 1099's in those instances.

Repr. Porter Do Not Pass

Vice chair Rohr: Second

Roll Call Vote: Yes 12 No 0 Absent 2

Motion for Do Not Pass as amended carries

Rep. Skroch Carrier

DP 2/3/19

February 5, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1371

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 34-15 of the North Dakota Century Code, relating to new hire reporting of independent contractors; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-15 of the North Dakota Century Code is created and enacted as follows:

Reporting of independent contractors.

The provisions of this chapter apply to an independent contractor if the aggregate payment for the services performed by the independent contractor is sufficient for the payor to be required to file an internal revenue service form 1099 or substantially equivalent form and report the payment on the form as nonemployee compensation.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 2020."

Renumber accordingly

Date: 25-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 371

House Human Services Committee

Subcommittee

Amendment LC# or Description: 19.0540.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By Rep. Porter Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr - Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total (Yes) _____ No _____
Absent _____
Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Voice vote: Motion carries to adopt amendment
Reporting of independant Contractors

Date: 2-5-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1371**

House Human Services Committee

Subcommittee

Amendment LC# or Description: 19.0540.01001

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider

Motion Made By Rep. Porter Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	X		Gretchen Dobervich	X	
Karen M. Rohr - Vice Chairman	X		Mary Schneider	X	
Dick Anderson	X				
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley	X				
Dwight Kiefert					
Todd Porter	X				
Matthew Ruby	X				
Bill Tveit					
Greg Westlind	X				
Kathy Skroch	X				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Skroch

If the vote is on an amendment, briefly indicate intent:
Reporting of Independant Contractors

REPORT OF STANDING COMMITTEE

HB 1371: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1371 was placed on the Sixth order on the calendar.

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SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 2020."

Renumber accordingly

2019 TESTIMONY

HB 1371

HB 1371 Introduction
Representative Craig Johnson

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Good morning Chairman Weisz and members of the House Human Services committee. For the record my name is Craig Johnson and I represent District 6. House Bill 1371 is the result of discussions that I have had with a constituent and the department of Child Support Enforcement. The problem was the self-employed parent that was chronically late with child support payments. The Department of Child Support Enforcement can collect payments from wage earners, but it is more difficult to collect from self employed individuals and independent contractors. This bill will give The Department of Child Support Enforcement another tool to make sure that Child Support obligations are collected and distributed as required. I have been informed that there is a friendly amendment to clarify the definition of independent contractor and the Commissioner of Child Support Enforcement will explain that amendment.

Thank you for your time and I will stand for any questions.

Craig Johnson
District 6 Representative

Chairman Weisz & Fellow Representatives

People of the House Of Human Services Committee:

HB 1371 1/22/19

AH 2

Pg. 1

Although it is not the norm, there are some situations in ND regarding child support in which court ordered obligations are not taken seriously. These situations happen when the payor does not have the obligation deducted automatically from a paycheck. An automatic deduction ensures that a payment to child support always occurs to the child support division of ND, ensuring that there is not a late payment as long as there is employment. When a payor does not receive a monthly or bi-monthly paycheck from an employer, or works for themselves in a contractor status, or in the ag industry such as farmers and ranchers here in ND where they may receive lump sum payments as infrequently as once a year. It is up to that individual to submit payment to the child support agency monthly. It can be easy to over look such a payment or in some cases, the payor can simply be negligent and simply not make the court ordered child support payments.

Situations like that can leave the receiving household in bad financial straights, especially in smaller rural areas where employment may not be as easy to obtain or where jobs may depend upon the weather conditions or job availability

That child support payment, no matter how small, can mean the difference between paying rent, putting food upon a table, or paying for heat.

I propose that in situations in which a payor is late 3 times within a 12 month time frame be put onto a lump sum payment program in which he or she is required to pay 12 months of child support ahead of time to the Child Support Enforcement Office of ND. Child Support can proceed as they normally would by distributing monthly payments to ensure that the payor keeps their court ordered obligation current and timely. This keeps the payor from being in contempt of court, and ensures that the law is followed. It would also put individuals who don't receive regular paychecks on the same footing as every man and woman with a paying job who pays child support.

In my situation, my son's father sells calves at least once a year and receives payment from an average of 300 calves. Yes, he is frequently 2 or even 3 months behind in child support. I have contacted Child Support regarding this frequently in the past and requested that he be put on direct withdrawal to Child support, but he chooses not to despite his past history with having problems making the small payment he is supposed to. That monthly child support makes a huge difference in our household.

I welcome any questions you may have regarding my own experiences.

Thank you for your time and consideration.

Michelle Rudland

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Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman

January 22, 2019

Chairman Weisz and members of the Human Services Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Department). I am here to support House Bill 1371.

More and more parents are working in the “gig” economy as independent contractors rather than traditional employees. Current law authorizes the Department to send an income withholding order to a person who hires an independent contractor, but since current law limits new hire reporting to employees, the Department often does not learn of the work until after the parent is paid, and it is too late to issue an income withholding order.

House Bill 1371 would close this loophole for a very narrow category of parents who:

1. Are not an employee (please see attached amendment)
2. Work for a business (as opposed to working for a private citizen); and
3. Earn more than \$600 during the year from the business.

Attached to my testimony is a sample 1099-MISC form – the bill only applies to payments that must be reported in Box 7.

The Department values the partnership we have with employers, and feels that House Bill 1371 is sufficiently narrow that collections from self-employed parents can be improved without an undue burden on employers.

This concludes my testimony, and I am happy to answer any questions you may have.

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VOID CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Rents \$	OMB No. 1545-0115 2019	Miscellaneous Income
		2 Royalties \$	Form 1099-MISC	
		3 Other income \$	4 Federal income tax withheld \$	Copy 1 For State Tax Department
PAYER'S TIN	RECIPIENT'S TIN	5 Fishing boat proceeds \$	6 Medical and health care payments \$	
RECIPIENT'S name		7 Nonemployee compensation \$	8 Substitute payments in lieu of dividends or interest \$	
Street address (including apt. no.)		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$	
City or town, state or province, country, and ZIP or foreign postal code		11	12	
Account number (see instructions)	FATCA filing requirement <input type="checkbox"/>	13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no.	18 State income \$

Form **1099-MISC**

www.irs.gov/Form1099MISC

Department of the Treasury - Internal Revenue Service

2

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Prepared by the North Dakota
Department of Human Services
01/22/2019

PROPOSED AMENDMENT TO HOUSE BILL NO. 1371

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SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 2020."

Renumber accordingly

HB 1371

1/22/19

Pg 1

A# 4



Greater North Dakota Chamber
Bill Number
House Human Services
Representative Rohr - Chair
Date of Hearing - January 21, 2019

Madam Chair and members of the committee, my name is Matt Gardner and I am here today representing the Greater North Dakota Chamber (GNDC). We are proud to say the Greater North Dakota Chamber is the largest statewide business advocacy organization in the state. We stand in opposition of House Bill 1371 and ask for a do not pass.

As written this would mandate employers to report earnings for the purposes of child support enforcement for independent contractors. In GNDC's perspective this would further blur the lines between the classification of an employee and an independent contractor. We support the purpose of child support enforcement, but this would essentially add another mandate to employers and with the nature of independent contractors would prove to be difficult. For these reasons we cannot support HB 1371 and ask for a do not pass.

Champions  Business

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