MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

1168

2001 HOUSE HUMAN SERVICES

HB 1168

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1168

House Human Services Committee

☐ Conference Committee

Hearing Date January 15, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		5108 to 6200
Tape 1		X	01 to 5040
tape 2	X		0 to 1415
Committee Clerk Signature	Connie Easton		

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep Niemeier, Rep Sandvig.

Chairman Price: Opened the hearing on HB 1168.

Mike Schwindt: Child Support Director for the Department of Human Services. We requested HB 1168 to address the calculation of interest on unpaid child support. (See Testimony)

A draft amendment was presented. The amendment is intended to assure that people subject to child support orders will be informed that the failure to make timely payments will result in interest charges.

Rep. Niemeier: In your testimony you mentioned a figure of 12% interest. There isn't any number in the bill or in the amendment. How will that be decided?

Mike Schwindt: There is a section in the law titled 28 dealing with judgetments that specifies what the interest rates will be.

Rep. Sandvig: What is the status of the FACSES system? Is it up and running? Are we behind in getting any federal penalities?

Mike Schwindt: The second years penalty was about $30,000. All total we are out about $150 to $160,000. We're not expecting any problems. Is it all done - No? We think we are in fairly good shape. If you want to watch how we are doing, you can go out on the federal government web site. There is an area there relating to state's recertification.

Rep. Porter: What would happen if North Dakota decided not to charge interest?

Mike Schwindt: North Dakota does not have to. It is not a federal law.

Rep. Porter: In that 3-year time frame when the department goes back and goes to court on behalf of the non-custodial parent, and if the income has increased and there are arrearages assigned then when would the interest start on those arrearages because the income increased for that person?

Mike Schwindt: The interest accrus based on when the court order says it is do and it is not paid. The court order hasn't changed, so there is no impact.

Rep. Porter: So then when that amount changes and that arrearage is determined, then the interest if it was from October 1 then interest starts October 1 until that arrears is paid up.

Mike Schwindt: If I owe $100 on the 1st of October and I don't pay it on the 1st of October, then I start accruing interest obligation on the 2nd of October.

Rep. Porter: I guess I'm thinking that if the court comes back after looking at the dollar amount and says your $1,000 in the arrears because your income changes at this point and the amount of child support hasn't changed until now when we've met, not only are we going to up what your

child support is, we are also going to put you in arrears for this time frame for this lump sum of money. Is that money, that lump sum charged interest?

Mike Schwindt: I would expect that the answer to that is no. There is no interest charged because there is no obligation to pay. If the judge says you now have to pay $100 plus $20 a month on arrears, as long as you made the $120 dollar payment there wouldn't be any interested charged.

Rep. Dosch: You indicated that interest begins if it is do October 1 and it hasn't been paid, October 2 interest starts accruing. You also indicated that there is a time difference when employees wages are being garnished there could be a week or two difference. Is there any grace period to allow for that discrepency in timing?

Mike Schwindt: That is what we have to figure out. Less than a month no interest would be charged. Over a month interest will be charged.

Rep. Porter: It is my understanding that the interest collected does go to whoever the child support is owed. This isn't the money that the state keeps.

Mike Schwindt: Interest goes the same as the principal goes. If the principal is assigned to the state, interest would go to the state. If the principal is assigned to the family, the interest goes to the family.

Vice Chairman Devlin: I have heard a couple of times that there is no federal law, but that it is state law we are dealing with, but really what we are dealing with is the state court orders.

Mike Schwindt: The law says that these are judgements by operations of law and it is state law.

Vice Chairman Devlin: If the court in '99 wouldn't have declared that to be a judgement, we wouldn't be here today dealing with this.

Mike Schwindt: I can't answer that. I to know this has been an on-going issue. We are trying to follow the law.

Rep. Niemeier: Is this proposal to charge interest seen as an incentive to comply with child support payments?

Mike Schwindt: The history books on this are somewhat spotty. I don't know the answer for sure. In some cases where people have the opportunity to pay their Visa bill at %18 percent interest or their child support at no percent, they will pay their Visa bill.

Rep. Niemeier: What is the rest of the argument then? If it isn't working very well as an incentive, what is the other rational?

Mike Schwindt: The reason we brought this bill here is that we want to fix the start date to calculate the interest.

Rep. Niemeier: But this is the beinning of charging interest, right?

Mike Schwindt: No, there are a few orders out there now where interest is actually calculating. It has been there, it is just that not much has been done with it.

Rep. Pollert: When does the state keep the money, and when does the custodial parent keep the money?

Mike Schwindt: The federal distribution rules describes who is going to get the money and in what order.

Rep. Pollert: So it is up to the department - we have some brilliant people up there that know as far if this person is on welfare, or this person is on TANF. So that's when you are saying that these cases all intermingle. So you can't give me a definite answer when it become that way and when it stays in the state coffers.

Mike Schwindt: Generally, when someone is on TANF, state will get the money back. It is retained back to cover the public's expenditures, up to a point. After it covers what the state has put out, we no longer retain it.

Rep. Sandvig: I am having a little bit of difficulty understanding as to why with the new computer system that we've been paying for why you can't go back and calculate those interest payments on that back-owed child support. With the cost of the computer system, it should be capable of doing this.

Mike Schwindt: First of all there are 20,000 cases that we are talking about. Second of all in order to do it properly we have to take each case. Figure out the date the money came in. There is going to be a lot of time spent digging for stuff. Not only that, but some of this information is out of state, and some of it even out of country. It would involve reconstructing the history books.

Rep. Weisz: I understand why we are here is that the arrearages automatically qualify for judgement, which means that they are subject to interest. If we wanted to avoid the hassle of collecting the interest, how would you change law to get around collecting interest?

Mike Schwindt: Probably repeal the law. I don't know the answer to that - I would need to talk to an attorney.

Chairman Price: To make sure that I have this right. Currently this interest is due on anyone of these cases, and any custodial parent out there in the whole state could go after it right now if they wanted to.

Mike Schwindt: Yes Madam Chairman.

Chairman Price: And what you would like to do is have a certain date to start applying the interest to make it nice and clean and neat, and that would be your authority? And every other

case out there, if the custodial parent wants the money, they have to go to court for it and have it figured by someone other than your office.

Mike Schwindt: It could be done by nogotiations, or by other means.

Chairman Price: So you are not adding anything new, you are just saying this is a date that you are going to start, and that you don't have to go back and reopen 20,000 cases, although anyone of them can be opened by the custodial parent if they want to.

Mike Schwindt: Yes Madam Chairman.

Chairman Price: Anyone else in favor of HB 1168? Anyone else in oposition of HB 1168?

Susan Beehler: Lobbyist for R-KIDS. We are opposed to HB 1168 for three reasons: The lack of accountability the child support office has. Accurate arrearages are difficult to obtain from Child Support Enforcement, and to verify interest is going to be attached to unreliable figures, and inefficiency. Interest is or could be difficult to figure. It takes anywwhere from 9 months over a year to have an adjustment now. The manpower is already running slow or overworked, the interest figuring will detract from getting child support orders already in place, enforced and modified, thus delaying support to the children. (See Testimony)

Rep. Weisz: Current law makes it clear that the state has to charge interest.

Susan Beehler: You need to amend that law.

Rep. Weisz: Current law makes it clear interest is to be collected. This is not addressing arrearages, but the interest on arrearage. This bill is an improvement over current state law.

Susan Beehler: The state want's to benefit.

Aaron Stroh: President of R-Kids. I am opposed to this bill. Currently if we have an adjustment or modification for child support, if my income would go up I would all of a sudden my child support payments would have to go up $50 a month they have it retroactive from when it was

filed. In that case all of a sudden I am in arrearage. The way this bill is written, after January 1 of 2002 they can go back and start charging me interest on the judgement that was made eigh months later. I don't think that's fair, and I don't think it is right. Another thing I feel that this bill does is that it gives further incentive for the few bad apples that are out there. They say there are 20,000 cases out of 37,000 cases in North Dakota that are in arrearage. I think some of those are because of when a new adjustment is made that people find themselves in arrearage already - Judgement just came out and they are already 16 months in arrearage. I think that you would find that the majority of those cases would show that. When you're that far in arrearage, it is hard to make it up, and if you compound it more with interest - it wouldn't be bad if it was 1% per month, but if it is 12% you are looking at extremely high interest rate. Who is going to be able to catch up with something like that. I am also handing out another written testimony from someone else. (See Margaret Rothe's written testimony.) Also, at the beginning of the bill starting on line 8 - "any dispursement made in error is not a gift and must be repaid". What happens if the department makes an error? Am I able to get that back? There is nothing in this bill that addresses that.

Rep. Niemeier: The organization that you represent, can you tell us any more stories about the families that are involved there. Do you have a feeling from those families regarding interest payments?

Aaron Stroh: I cannot give you the full story. I just know some have been charged interest.

Rep. Niemeier: Did interest charged expedite the payments?

Aaron Stroh: No, I couldn't tell you. I think something should be done to those that are in severe arrearages. The thing is that most of us are not in severe arreages. If I'm making payments on the 12th and they don't dispurse until the 18th, I shouldn't be in arrearage.

Rep. Metcalf: I need positive facts, then I would be very much interested. We only act on facts.

Rep. Price: Closed hearing on HB 1168.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1168 b

House Human Services Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
2		xx	1980--end
3	xx		1--2790

Committee Clerk Signature Connie Easton

Minutes:Chair Price : Take up HB1168. You have an amendment by Rep. Weisz.

Rep. Weisz : Explained amendment.

Mike Schwindt, Dept. of Human Services : What happens to the rest of the bill with this amendment. We would be opposed to this amendment. We would be able to access but not collect. We could collect but only with a court order. If we developed an amnesty program, this would cause an important shift. The law requires the application of interest before principle. I'm not sure how that will be done, if we can't collect. We have to report information to credit bureaus. We ended up with more issues then we started with. People, right now can say, we don't want interest charged on our debt.

Chair Price : I need a clarification. The department has not been collecting interest.

Mike : We have been, but only in a few cases. It's a philosophical issue. People pay interest on their cars, so why not charge people interest for their late child payments.

Rep. Porter : (3052) One of the concerns expressed to me is in the modification orders. When the courts go back three months or five months or how ever far they can go back, come back and garnish that person's wages for that period of time. Is that modification order and that arrearage going to be charged interest under the way the bill is currently written? I'm sure there must be times when someone must get a reduction in their child support. Does the court ever go back and see when that reduction should have taken place and then give money back to the person who paid in too much?

Mike : In the first case you ask, we anticipated that this would happen. We calculated there would not be an interest charge. Second, yes the court can. We will refund the money or they may gift it to the children. Somehow we need to get the account squared.

Rep. Dosch : The people who testified said they didn't want to antagonize their ex and that they were just happy to get child support. Charging the interest may anger their ex. You are saying they do have the option to wave that interest. Some are concerned about the arrears interest charges. To clean this up, can you suggest something? Do we put in a time frame, say 6 months before any interest accrues. Or do we say we won't go back on any arrears do to adjustment of child support payments.

Mike : Anybody can forgive a debt. To go back on those modifications, you have two choices. You can build something in here, or you can go on record and say that's the way we intend to do business. I'd hate to come back in 2 years, and say we lied to you and we didn't intend to put it in here. You state that you intend to do what is suggested.

Rep. Metcalf : Was anything done on our discussion with Mr. Nordwal?

Mike : We brought in your amendment, and it was placed in the back of my testimony.

Rep. Metcalf : How would this amendment fit in with this amendment? If this one goes through, then why would we need a statement.

Mike : It would be a constitutional issue.

Rep. Weisz : If you change the language,"the department shall not charge interest", that does eliminate you from having that in record.

Mike : Interest can be charged before or after Jan 1, 2002. The main question is who does the calculating. You bring a number to the judge and he says that will be put on the payment record as due on account. After Jan.1, 2002, we will do the calculating, record, and collect.

Rep. Weisz : How are you going to deal with the issue for any other state who may have had some interest before Jan. 1, 2002. Wouldn't the same rules apply.

Mike : Yes. **(end Tape 2, begin Tape 3 side A)**

Chair Price : I understand that if it is owed to the obligee, that is something we can't forgive. The biggest question is if you feel that some of the arrearage accusations will be addressed by Jan. 1, 2002? Or should we be doing something else. If we have an employer who doesn't pay within 7 working days, it should not be the employees fault.

Mike : The issue about someone getting a judgment that goes back 6 months, we are sensitive to that. We don't want to charge interest. We want it paid without paying interest. The 6 months is in judiciary, and I don't know what we can do. The court order is signed by a judge. They can back date it 6 months. We can't speed the courts up. We give them information and that's about it. The only way to work through problems is to look at each case. We make mistakes and they make mistakes. We try to get all accounts cleaned up and in a format that is readily accessible. In Montana, they have a web site with the list of people who are delinquent. If you owe over $500 you are on that list. They also put it in the newspaper that you owe child support. I'm not

willing to go that far yet. Our information is not clean enough to do that. We are cleaning it up one case at a time.

Rep. Weisz : You stated you did not have the flexibility to charge interest because the state auditor said you have to. Because of the judgment law, you have to do certain things. From now on you will be charging interest, but in reality you should have been.

Mike : The state auditor makes recommendations, not orders, as I see it. The auditors office can't order me to do that. They can recommend. The law has been out there for years to charge interest. The supreme court has said that judgment law applies to child support judgment. How do you deal with the old accounts. You have to get the information together as best you can.

Rep. Weisz : Is it your intent then from that point forward to charge interest to all accounts in arrears?

Mike : Yes, sir. The state can still forgo the interest on the state's share if they want, not on the other part.

Rep. Dosch : In charging of the interest, do you see any problems with someone 10 days late, will you charge interest? Isn't it computer programmed when interest will accrue on the delinquent payment. When do you have to state that the interest will begin.

Mike : There is no grace period. What we are looking at doing is charging at the 15th of the month. If you are due on the 31st and you missed the payment, you will be in the time frame. If you are due on the 1st, and you pay the 9th, you will not be charged.

Rep. Dosch : If my employer is sending it in for me and he is late, then I will be accessed the interest. Wouldn't it be better to have a 30 or 60 day grace period so you don't get a lot of people calling you.

Mike : If the employer did not send the check or if it got lost, we would be flexible and go back and adjust.

Rep. Dosch : I'd like to give the Our Kids group that were against this bill something. That was a big concern to them.

Mike : This is what the law requires. We are trying to follow the law.

Rep. Niemeier : I see both of the amendments before us address the area of interest. **I move a DO NOT PASS on HB1168.**

Rep. Sandvig : **I second.**

Rep. J. Nelson : What do you do when the bill fails. The state isn't in compliance with what supreme court is telling us we have to do.

Rep. Niemeier : It seems to me that the court system has that option to add interest to the support payments. The state doesn't have to, right? I don't see why we would want to deal with this at all. It has been proven that this interest doesn't provide an incentive. It's counter productive.

Chair Price : Because of the supreme court ruling, Human Services feels they will have to charge interest. They are trying to avoid going back 10, 12, or 15 years of old cases, where they don't have good information, and opening up 20,000 cases. There will be incorrect information. He has the obligation to do that unless we take that away from him. This bill would put off the state charging interest until 2002 and start clean. By defeating this bill, the interest isn't going away. They will just have to open all the old cases.

Rep. Galvin : I thought that the original reason for this bill, when we first discussed it, was so that the agency wouldn't have to calculate the old accounts. Wasn't that the original intent?

Mike : Yes, but there is a lot of old stuff going back to 1969, etc. To calculate, you have to go back to the date the case first started. That's lots of data entry to get everything into the computers. We are simply trying to start clean.

Chair Price : Given what your department has gone through in the last few years, is Jan. 2002 a good date, or should we consider a later time?

Mike : We think that is enough time. I would not object to more time. Just this week I sent out 800 accounts to clerk of courts to look. There was $50,000 delinquents there.

Rep. Galvin : Do you have a high number of accounts that are that old, and there has been no action or payments at all?

Mike : There are 20,000 cases that need to be looked at. That's an accurate number. Some of them are very old. Some could go back 30-40 years.

Rep. Galvin : Is there no statute of limitations?

Mike : No. You can't even allow this for bankruptcy.

Rep. Weisz : I apologize if my amendment caused more confusion then intended. I fully support what the department is trying to do. I hope the committee will not kill this bill.

Rep. Cleary : I don't know where else you can go and not get charged interest on a bill. I think they are getting a break for getting all of those years they are behind. You can't do that on your credit card bill. I think this is a fair thing.

Rep. Niemeier : I would like to withdraw my motion. I did not consider the supreme court ruling when I made my first motion.

Rep. Sandvig : It's all right with me, too.

Rep. Niemeier : I do have a question as to the state auditor recommendation. Is that within the scope of his authority?

Chair Price : Yes.

Rep. Sandvig : The reason I seconded the motion was because of the $50,000 needed to update the system. I'm having a big problem with the cost to update the computer system.

Chair Price : Mike, are you still in support of the original set of amendments you prepared?

Mike : Yes.

Rep. Metcalf : **I move the second set of amendments. They are on the back of Schwindt testimony.**

Rep. Devlin : **Second.**

VOICE VOTE: ALL YES. MOTION PASSED.

Chair Price : I was looking at the Weisz amendments that said "the department shall not collect interest on arrearages for unpaid child support owed the state, but may collect interest on arrearages for unpaid child support owed to a third party, when the interest to be paid is ordered by a judge in the amount that has been calculated by a third party".

Rep. Weisz : If the committee doesn't want to charge interest from now and the future, fine. If they feel we want to charge interest, I'm not going to present the amendment and waste the committee's time. There are a couple of changes that will make this bill work. I won't even offer my amendment, Madame Chair.

Chair Price : If we are going to charge interest on some, then we should charge interest on all. We're going to have some cases moving in and out of assignment of child support. Some will be on and off of assistance, or some may loose their job. It get's complicated.

Rep. Metcalf : I think all the areas have been covered. It is not, basically, the decision of the divorce courts that interest will be charged. The Supreme Court said the interest will be charged. We can pass a law and say we won't collect interest on the state's part of that child support. The

custodial parent has the right to that interest, and we can't do anything about that. We could have a real nightmare to get the computers on line with this.

Rep. Galvin : In higher education, they spend $10 to collect $.37. That may be what we are doing here. At some point we need to get into reality.

Rep. Cleary : I think the state should get that part of the interest because they are doing all the work. It is expensive to upgrade their computers.

Rep. Dosch : Does the committee feel we need to deal with modified payments. People that talked to me, this was the concern.

Mike : If I say to you we won't charge interest, I won't be back here in 2 years. I will be fired. I can't say I will do something and do another. We do everything we can not to charge interest.

Chair Price : Knowing what this department has gone through since 1997 and welfare reform. I hope they have gotten most of the boys out. If not, we will be back in 2 years to adjust and fix.

Rep. Niemeier : Mike, how soon do you think you can get this interest statement up and running?

Mike : It should be up and running soon.

Chair Price : I think extending the date on this to six months may help this bill. I think we can forgo that interest and make it as perfect as you can before it starts.

Mike : Extending it another six months would be appreciated.

Rep. Devlin : **I move to extent the date on line 16 and line 18 to 6 months.**

Rep. Weiler : **I second.**

Rep. Dosch : Will that cause problems being we are a fiscal year?

Mike : Not sure.

VOICE VOTE: ALL YES. MOTION PASSED.

Rep. Sandvig : I was wondering something on the first amendment. They are suppose to be sending out statements. Could they automatically collect interest without the obligors notice

Rep. Metcalf : Basically, this is what brought most of this to the forefront. People were not aware that there was interest on child support. They went back 20 years. This is a judgment and there will be interested collected. If you don't know about the law, that's immaterial. The only purpose of this amendment is to advise them that they are going to be charged interest. It doesn't make any difference to the Supreme Court if you know or not.

Rep. Devlin : **I move a DO PASS AS AMENDED.**

Rep. Porter : **I second.**

VOTE: 12 YES and 1 NO with 1 absent. PASSED. Rep. Metcalf will carry the bill.

FISCAL NOTE

Requested by Legislative Council
01/12/2001

REVISION

Bill/Resolution No.: HB 1168

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill establishes the beginning date for calculating interest accrued on child support obligations that become arrearages. The bill itself has does not result in a fiscal impact as it establishes a point in time as to when interest can begin to accrue. However, the process of starting t charge interest on arrearages will result in programming costs and these costs would amount to $50,091. This amounts has been included in the 2001 - 2003 budget of the Department of Human Services.

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.*

   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.*

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

appropriations.

Name:	Brenda M. Welsz	**Agency:**	Dept. of Human Services
Phone Number:	701-328-2397	**Date Prepared:**	01/05/2001

FISCAL NOTE

Requested by Legislative Council
12/26/2000

Bill/Resolution No.: HB 1168

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill establishes the beginning date for calculating interest accrued on child support obligations that become arrearages. The bill has no fiscal effect.

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.*

   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.*

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

Name:	Brenda M. Welsz	**Agency:**	Dept. of Human Services
Phone Number:	701-328-2397	**Date Prepared:**	01/05/2001

PROPOSED AMENDMENT TO HB 1168

Page 1, after line 3 insert:

"**SECTION 1**: A new subsection to section 14-08.1-05 of the 1999 Supplement is created and enacted as follows:

The department shall not collect interest on arrearages for unpaid child support unless ordered by the court, or by agreement between the obligee and obligor."

Renumber accordingly

Adopted by the Human Services Committee
January 24, 2001

VF
1/25/01

HOUSE AMENDMENTS TO HB 1168 HOUSE HS 1-26-01

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to a statement regarding interest on unpaid child support; and"

Page 1, line 16, replace "January" with "July"

Page 1, line 18, replace "January" with "July"

Page 1, after line 22, insert:

"**SECTION 2.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Child support order - Required interest statement. Each judgment or order requiring the payment of child support must include a statement that the child support obligation will accrue interest if not timely paid. Accrual of interest and validity of the order are not affected by a failure to include the statement required by this section."

Renumber accordingly

Date: 1-24-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1168

House Human Services Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep. Devlin Seconded By Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairman	✓		Audrey Cleary	✓	
William Devlin - V. Chairman	✓		Ralph Metcalf	✓	
Mark Dosch	✓		Carol Niemeier	✓	
Pat Galvin	✓		Sally Sandvig		✓
Frank Klein	✓				
Chet Pollert	✓				
Todd Porter	✓				
Wayne Tieman	✓				
Dave Weiler	✓				
Robin Weisz					

Total (Yes) 12 No 1

Absent: one

Floor Assignment Rep. Metcalf

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

REPORT OF STANDING COMMITTEE

HB 1168: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1168 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to a statement regarding interest on unpaid child support; and"

Page 1, line 16, replace "January" with "July"

Page 1, line 18, replace "January" with "July"

Page 1, after line 22, insert:

"**SECTION 2.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Child support order - Required interest statement. Each judgment or order requiring the payment of child support must include a statement that the child support obligation will accrue interest if not timely paid. Accrual of interest and validity of the order are not affected by a failure to include the statement required by this section."

Renumber accordingly

2001 SENATE HUMAN SERVICES

HB 1168

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1168

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 28, 2001

Tape Number	Side A	Side B	Meter #
2	X		47.2
March 19, 2001 1	X		48
Committee Clerk Signature			

Minutes:

The hearing was opened on HB 1168.

MIKE SCHWINDT, Child Support Enforcement Director, Dept. Human Services, explained bill. (Written testimony). The bill is asking for authority to change interest situation. There is a need for an amendment. SENATOR MATHERN: On line 17 and 18 - Do you want to box yourself in to this plan? It seems too restrictive. MR. SCHWINDT: Yes, that is probably the downside of the bill. We would not be out of the law. SENATOR LEE: That 12% interest rate? MR. SCHWINDT: That was set by state law. SENATOR LEE: In 1997 the interest rate was 12%, now they are lower; maybe we need to adjust that. MR. SCHWINDT: It is in your prerogative to change 12 to any other number is deemed appropriate. SENATOR POLOVITZ: Why charge interest on this? SENATOR LEE: Because you owe it! SENATOR FISCHER: You pay 12% on real estate; 18% on credit cards.

Opposition:

SUSAN BEEHLER, R-KIDS, opposes bill (Written testimony). SENATOR LEE: Is there some advantage to the obligor as far as the date? MS. BEEHLER: Yes, I can, but the option should be left to the individual that's owed the money. This provides more power to the department and not doing a good enough job for our children.

The hearing was closed on HB 1168.

March 19, 2001, Tape 1, Side A, Meter 48.

Discussion resumed on HB 1168.

SCOTT KELSH submitted amendments. SENATOR MATHERN explained the amendments; provides a credit to employers who set up a child care in their area. SENATOR MATHERN moved 18260.0201. SENATOR POLOVITZ seconded the motion. Discussion. Roll call vote failed 2-4. MIKE SCHWINDT had offered amendments dated February 14. SENATOR MATHERN moved amendment. SENATOR KILZER seconded the motion. Voice vote carried the amendment. SENATOR MATHERN moved DO PASS. SENATOR POLOVITZ seconded the motion. Discussion. Roll call vote carried 6-0-0. SENATOR KILZER will carry the bill.

18260.0201
Title.

Prepared by the Legislative Council staff for
Representative S. Kelsh
March 6, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1168

Page 1, line 1, after "14-09" insert ", a new section to chapter 57-38, and a new subsection to section 57-38-30.3"

Page 1, line 2, after "support" insert "and an income tax credit for employers for contributions or support for child care programs for dependents of employees" and remove "and"

Page 1, line 4, after "support" insert "; and to provide an effective date"

Page 2, after line 6, insert:

"**SECTION 3.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Employer credit for employee child care program or child care contribution.

1. An employer is entitled to an income tax credit against taxes due and computed under section 57-38-29, 57-38-30, or 57-38-30.3 in an amount equal to twenty-five percent of the employer's net cost of operating a child care program used primarily by dependents of the taxpayer's employees or twenty-five percent of an employer's net cost of any monetary or in-kind contribution to support child care. For purposes of this section, a contribution to support child care may be made by a single employer or jointly by one or more employers and includes:

   a. Donating money or real or personal property for the establishment or operation of a child care facility, including funding for child care facility employee benefits that are not required by law;

   b. Contributing money for employees' dependents' child care facility expenses, including funding an employee's flexible benefit account for that purpose;

   c. Donating money for training employees of a child care program or facility used by dependents of employees;

   d. Donating money or other resources to support a family child care network; and

   e. Purchasing or providing resource and referral services to assist employees in obtaining care for their dependents.

2. The amount of the credit allowed by this section for any child care program or support for child care may not exceed twenty thousand dollars for any taxable year. If two or more employers share in the costs eligible for the credit provided by this section, each employer is eligible for the portion of the credit which equals twenty-five percent of that employer's share of the net cost of the contribution or the operation of the child care program. The amount of credit in any taxable year under this section is limited to the lesser of twenty-five percent of the taxpayer's tax liability under this chapter

or twenty-five percent of the taxpayer's net cost of the contribution or of operating a child care program, and any excess may be carried over and applied against taxes due under this chapter for up to three taxable years

3. For purposes of this section, "child care program" and "child care facility" mean a provider of early childhood services licensed by the department of human services under chapter 50-11.1.

4. A partnership, limited partnership, subchapter S corporation, limited liability company or any other pass-through entity that is an employer and makes a contribution to support child care or provide a child care program for children of employees must be considered to be the taxpayer for purposes of any credit limitations in this section, and the amount of the credit allowed with respect to the entity's investment must be determined at the pass-through entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the pass-through entity.

SECTION 4. A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

An individual, estate, or trust is allowed, as a credit against the tax otherwise due under this section, the employer child care program credit under section 3 of this Act.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000."

Renumber accordingly

Date: 3/19/01

Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1165

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number 18260.0201

Action Taken Amendment failed

Motion Made By Sen Mathern Seconded By Sen Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson		✓	Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson		✓	Senator Mathern	✓	
Senator Erbele		✓			
Senator Fischer		✓			

Total (Yes) 4 No 2

Absent 0

Floor Assignment _____

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

Date: 3/19/01

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1168

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment

Motion Made By Sen Mathern Seconded By Sen Kilzer

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson			Senator Polovitz		
Senator Kilzer, Vice-Chairperson			Senator Mathern		
Senator Erbele					
Senator Fischer					

voice vote carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Mike Schmidt's amendment

Date: 3/19/01

Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1168

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended + rerefered

Motion Made By Sen Mathern Seconded By Sen Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Kilzer

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

REPORT OF STANDING COMMITTEE

HB 1168, as engrossed: Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1168 was placed on the Sixth order on the calendar.

Page 1, line 16, replace "that" with "the earliest" and after "principal" insert "of that arrearage"

Renumber accordingly

2001 TESTIMONY

HB 1168

House Human Services Committee

HB 1168

January 15, 2001

Chairman Price, Members of the Committee, I am Mike Schwindt, Child Support Enforcement Director for the Department of Human Services. We requested HB 1168 to address the calculation of interest on unpaid child support.

Background

- Under existing law, unpaid child support becomes a judgment by operation of law (N.D.C.C. 14-08.1-05) subject to 12% interest that cannot be compounded (N.D.C.C. 28-20-34).
- Over the years, while interest could have been charged, very few court orders specified that interest would be due if the payment was not timely made.
- In February 1999, the Supreme Court's opinion in Martin v. Rath, 1999 ND 31, brought the interest issue to the fore. The Court declared that the unpaid child support orders constitute judgments, and that interest accrues on such judgments.
- In reports from 1994 and 2000, the State Auditor recommended we charge interest on arrears. We agreed to do so within programmatic and resource limits.

Current status:

As we looked at how to implement the interest component, we quickly learned that it would not be a simple process for a number of reasons:

- Our accounts cover many years. We can have cases covering the life span of children from birth well into adulthood. Current support would usually have terminated when the child turned 18 but arrearages continue and accrue interest.

- Some of the money is owed to the State, some to the family.
- We did the necessary calculations on one Minot case covering a 15-year period ending in 1999. This case, with a spotty payment record, took in excess of 30 hours and each person reached a different conclusion. In part, these differences stem from the detailed set of rules and the varying interpretations of the rules applied to the calculations. For example, there is no grace period for payment as with a house payment. Here, the child support payment is due on a date certain. Interest is to be accrued even if the payment is received the next day. This is further complicated by the federal distribution rules on the order in which people get money. The distribution rules have changed in the past and Congress is again tinkering with them.

With an apparent need to calculate interest on the 20,000 of the 37,000 court orders involving arrearages of about $150 million, we feel it is essential that we start the process on the right foot; consequently, we are asking for these changes.

HB 1168 contemplates a forward-looking approach to interest calculation while leaving room for interest calculation for prior periods on a case-by-case basis. This will conserve public resources, but allow the interest for prior periods to be entered into the records whenever the parties believe that the likelihood of collecting prior interest is worth the cost of the calculations.

This bill asks that the public authority, which is the Department of Human Services in execution of its duties under the state plan, thus including the Regional Child Support Enforcement Units and the state office, be responsible for calculating interest on obligations that first become arrearages after January 1, 2002.

- This would give us time to program FACSES to handle the calculations.
- Nothing would preclude the calculation of interest for arrearages that became due prior to that date. If interest were to be charged,
  - the calculations for periods before January 1, 2002 would need to be done by an individual or entity other than the public authority, and
  - the judge would approve the amount to be entered for judgment interest for prior periods, and we would enter the judicially approved interest calculations in the official records.
- We would enforce the collection of interest just as we enforce principal collection.

As a practical matter, in January 2002, we would see little change since we would be tracking what is due and not paid during that month.

- In February, we would make an interest calculation on the unpaid balances for January. This interest would be recorded as an additional debt owed by the noncustodial parent.
- As collections are received, the collections are applied first to the current support for the month, then to the outstanding interest, then to the balance due at the end of the preceding month within the federal distribution categories.
- We intend to do the interest calculation only once a month. If we do it every day, the cost for CPU time will exceed the benefits. Also, the payment ledgers will grow with an entry for each day's interest calculations, further complicating their usability.

There are some administrative items that we need to consider as we implement interest accrual. For example, we need to closely track receipts from income withholding orders. When someone is paid weekly, the funds are to be sent in weekly. Because some months will have five paydays and others only four, the family will not receive the full amount each month. However; over a three-month period, the full amount will be paid. A similar

situation occurs when a person is paid every two weeks which results in 26 pay periods per year. Again, over time, the monthly amount will vary but the full amount will be paid every six months. Also, paydays and therefore income withholdings, do not necessarily coincide with the due date on the court order. These are further complicated because funds are withheld from paychecks in one month and we receive the funds in the next month. We treat those payments as receipts for the month in which we receive them.

We also need to do some customer education on this issue before it becomes effective.

- People are used to not having interest charged on the arrearages. Once this is implemented, the front line customer service staff at the regional offices, the clerks of court and the state office will be swamped with calls, many from unhappy noncustodial parents.
- Monthly billing documents that go to about 4,500 obligors should be revised to show the interest component. This will take some programming and testing time.
- Some people may elect to pay off their balances instead of incurring the interest rate.
- We may look at some sort of amnesty program as some states have done to get more people to pay voluntarily. This will take considerable thought and research as well as time to properly implement.
- We are also aware that the consensus among the states on charging interest is mixed. Some favor, others think it is the wrong thing to do. Our choices seem limited based on the existing law covering judgments and child support.

We have also prepared an amendment for your consideration at the request of Representative Metcalf. A copy of the draft amendment is attached to this testimony. This draft amendment is intended to assure that people

subject to child support orders will be informed that the failure to make timely payments will result in interest charges.

We will be happy to answer questions.

Prepared by the North Dakota
Department of Human Services
1/11/01

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1168

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 14-09 relating to a statement that interest will accrue on unpaid child support, and"

Page 1, after line 22, insert:

"**SECTION 2.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Child support order - Required interest statement. Each judgment or order requiring the payment of child support shall include a statement that the child support obligation will accrue interest if not timely paid. Accrual of interest and validity of the order are not affected by a failure to include the statement required by this section."

Renumber accordingly

Testimony HB1168
Monday January 15, 2001 Human Service Committee
Fort Union room

Good morning Chairman Representative Price and members of the Human Ser Committee,

My name is Susan Beehler, an unpaid lobbyist for R-KIDS, Remembering Kids Divorce Settlements, a working mom with 5 children, a custodial parent and a w a non-custodial parent, a girl scout leader to two troops in Mandan, and training become a advocate for AARC.

We are opposed to HB1168 for three reasons.

1. The lack of accountability the child support office has.
2. Accurate arrearages are difficult to obtain from Child Support Enforcement ar verify interest is going to be attached to unreliable figure.
3. Inefficiency. Interest is or could be difficult to figure. It takes anywhere from months over a year to have an adjustment now. The manpower is already running slow or overworked, the interest figuring will detract from getting ch support orders already in place, enforced and modified, thus delaying suppo the children.

Lack of accountability

As an obligee I have not been able to receive a consistent statement of the arrearages owed to the state and me. Minnesota has a court order to collect And North Dakota says he is supposed to pay $225. No one has explained h why my support order could have been lowered in Minnesota without my knov and why the North Dakota order is not being enforced. Currently there is no w settle an error if either the non-custodial parent or the custodial parent believe error was made. In passing this bill you will be giving more power to the agen There is no way to protest or contest amounts without going through a lawsuit costing a bundle of money especially if the amount is less than $500, it would more than that to fight for your money even if it was shown you were owed it. is no agency to turn to when you believe you have an error in your child support record.
When the automated system started up I paid close attention to whether or not support was sent from Minnesota and when our state showed it being received

Before I go on I need a volunteer.

There is no privacy in my child support manners in fact if any of you pay child support or receive child support all I need is your social security and I can find out if you pay on time and how much. How do you feel about the easy access to your personal information? I haven't tried but maybe anyone could change your address.

3/2/99 I received notice the system was changed to the disbursement center. On 3/3/99 the Minnesota automated line that requires a pin number from your caseworker showed I was to have received a $100 payment. I never received that payment. On 3/15/99 I left a message with my problem for my Minnesota case worker, she responded by letter dated 3/16/99 said she could not answer as to what had happened to the payment, and directing me to talk to North Dakota. I did. They have no record. They said they would look into it but they have never responded.

On several occasions I have requested the Child Support office to give me the arrearages owed to the state and to myself.
12/24/96 the clerk of court's office shows my arrears at 24,572.72
8/5/97 thru 1/25/99 I had received $1579; I should have received a total of $7200
$7200 minus $1579; the amount of my arrearage at $5631 for that time period
If you add:

$24,572.72
+ 5,631.00 It comes to $30023.72

The record shows on1/25/99 $28396.72
There is a difference of $ 1627.00 from my figures and the clerk's record.

WHY? Who is accoutable for this?

I do not know what the state is owed or what the kept, I guess that paper I signed in 1984 excludes me from knowing.

This bring me to our second reason
2. Accurate arrearages are difficult to obtain
The Bismarck Tribune tells of one person trying to determine the arrearage on his account when he wasn't supposed to have one.

Simply put if you think you are owed money or you do not owe money whatever the agency says is the gospel truth.
There is no effective way for the "customer" as the enforcement center refers to us, to contest any finding they have. Child Support enforcement has as much power as the IRS.

Please do not give them more power, this bill will do that, and how is the "customer" going to disagree with the way they figured interest when the principal can't even be established.

Reason #3 Inefficiency
Interest is or could be difficult to figure.
In 1994 I approached the director of HS at that time, Bud Weisman, and I requested the child support guidelines be reviewed. He asked my suggestion as to how I thought support should be figured. At that time I felt a straight percent with certain allowable deductions would be a simple way to go, it would have been similar to any other payroll deduction, thus eliminating the need for so many reviews and modifications. The parent's income would go up and the support would follow immediately. The hand of the state wants to be in the "cookie jar".
His response was we can't use percentages, the clerks wouldn't be able to figure the support. I thought that was a lame excuse. A payroll clerk makes this kind of computation to figure FICA which is a percentage and has limitations every time payroll is done.

The Human Service Department is now able to figure complicated interest formulas and 6 years ago they couldn't multiply 14% to someone's pay?

If these interest calculations go anything like having a modification done, the customers will just have to resign themselves to the poor service they already receive and compound it with yet another delay. The manpower will be going for additional services when they are not efficiently delivering the services of enforcement and collections. I have included timelines in a request for a review and modification of cooperating non-custodial parent and non-cooperating custodial parent. Both in the end ended up with three months in arrears. It is the "nature of the beast", the child support system. The agency actually perpetuates a system that in and of itself will create arrearage with or without the cooperation of the parent.

We believe when the department can do all requested uncontested modifications in 90 days or less than let them approach you to add the additional manpower to go after interest.

until than our resources need to be used to improve the system and get the money to the children, not add more bureaucracy, to a gluttonous agency.

We urge you to vote NO to passing HB1168
No Accountability
Accurate arrearages are difficult to obtain
Inefficiency

A modification timeline for a cooperating non-custodial parent

2/10/00 A request for a modification, the same date liberal visitation is granted to the non-custodial parent, the letter is responded to immediately all necessary forms and the latest tax return included, 1999 had not yet been completed. According to the guidelines based on information at this time child support would be around $371 a month.

7/00 A letter comes requesting a tax return again and update information because too much time has lapsed since 2/00.

9/4/00 after receiving the stipulation to raise the child support from $225 to $460, non-custodial parent ask if the tax exemption for the child could alternate every other year even though the child support was figured at giving him the deduction, yet the custodial parent will be receiving it. Also asked if a clause could be added to adjust settling medical bills. The office said a attorney would have to be hired even though the custodial parent had agreed to the terms. Didn't pursue any further.

9/25/00 The office had received stipulation agreeing to increase.

10/20/00 Court given notice to amend.

10/25/00 The order is sent to the non-custodial parent, but nothing about when it would be withheld from check or any instructions on how to handle the increase.

11/30/00 A new withholding order is completed.

1/4/00 Receives notice that there is an arrearage of 587.50 and it was be reported to the credit bureau as a unpaid debt.

The non-custodial parent complied and did not dispute amount. The modification took a total about 10 months before any new support was received by mother.

A modification timeline for a non-cooperating non-custodial parent

[redacted]1/1999 Review requested

1/14/00 Letter is received saying that a review will be done in 35 days, that would make it over 3 months just to start the review.

5/26/00 Receive notice that the non-custodial parent had not furnished the necessary information to conduct the review, so they were imputing his income at an increase of 10% per year. Child support amount would go from 225 a month to 492 a month.
Yet the stipulation enclosed only requested 412 a month, maybe a typo?

7/00 Custodial parent went to child support enforcement office, they said he wasn't cooperating and had till the end of the month to comply.

814/00 The non-custodial parent had sent in a 1099 showing income, the office said he had till8/21/00 to send in his last pay stub, a list of unreimbursed expenses and receipts and a 1999 tax return with
W-2's, 1099 and schedules.

[redacted]/6/00 Letter sent thanking for 1999 tax return, but now need 1995 thru 1998 return also W-2's even if they are just the spouses.
He has till 9/13/00 to comply.

10/25/00 Received notice that support is $412 per month and a hearing is scheduled for 12/22/00.

12/22/00 Neither parent attends hearing, Child support is set at $508 per month, and was due 9/1/00. So the non-custodial parent is in arrears for 3 months and has just received the notice of the change.

A withholding order is not in effect. So the order probably means nothing except maybe criminal charges.

Time for a non-complying non-custodial parent till judgement is made one year and two months, 14 months.

Both the non-complying non-custodial parent and the complying custodial [redacted]arent are now 3 months in arrears just in receiving a modification. Possibly the non-complying will ended up another month a two behind before he gets notice of the change.

HB
H1168 - 8:30 Fort Union Room

Madam Chairman Price & mbrs of the committee, my name is Margaret Kothe. I am an active member of the R-KIDS. I am opposed to HB1168. Many non custodial parents are doing all they can just to satisfy the monthly CS obligations without having to pay interest and it does not take much to have an arrearage by no fault of their own. Injury at work, home, a MVA or maybe they are just up for their CS review maybe that injury is such that the recovery time is only a few weeks or may it will be a lengthy recovery and with the CS review even if it is not contested can take months to get the order finalized which now goes retro back to the date of the original request for the review so now they are in arrears then to add interest to that when it was out of their control seems outrageous. How does this help the child or anybody else except the Dept of Human Serv. to add interest to CS arrearages. CS interest = non-cust parent working more hours (or "2nd job") = less time with the child = a disadvantage for the child not an advantage.

Margaret Kothe
258-8437
rmkothe@bigsky.com

Senate Human Services Committee

HB 1168

February 28, 2001

Madame Chairman, Members of the Committee, I am Mike Schwindt, Child Support Enforcement Director for the Department of Human Services. We requested HB 1168 to address the calculation of interest on unpaid child support.

Background

- Federal law, (42 USC 666(a)(9)) and state law (N.D.C.C. 14-08.1-05) require unpaid child support to become a judgment by operation of law subject to 12% interest that cannot be compounded (N.D.C.C. 28-20-34).
- At least since 1987, while interest was due on child support arrearages, very few court orders specified it.
- In February 1999, the North Dakota Supreme Court's opinion in Martin v. Rath, 1999 ND 31, brought the interest issue to the fore. The Court noted that the unpaid child support orders constitute judgments, and that interest accrues on such judgments. That case has attracted a fair amount of attention.
- In reports from 1994 and 2000, the State Auditor recommended we calculate interest on arrears. We agreed to do so within programmatic and resource limits.

Current status:

Calculating interest on child support is not a simple process:

- Our accounts cover many years. We can have cases covering the life span of children from birth well into adulthood. Current support would usually have terminated when the child turned 18 but arrearages continue and accrue interest.

- Arrearages could have occurred and begun to accrue interest at any time.
- Some of the money is owed to the State, some to the family.
- We did the necessary calculations on one Minot case covering a 15-year period ending in 1999. This case, with a spotty payment record, took in excess of 30 hours and each person reached a different conclusion. In part, these differences stem from the detailed set of rules and the varying interpretations of the rules applied to the calculations. For example, there is no grace period for payment as with a house payment. Here, the child support payment is due on a date certain. Interest is to be accrued even if the payment is received the next day. Federal distribution rules on whether the family or the state receives a particular payment must be followed. The distribution rules have changed in the past and Congress is again tinkering with them.

With an apparent need to calculate interest on about 20,000 of the 37,000 court orders involving arrearages of about $150 million, we feel it is essential that we start the process on the right foot; consequently, we are asking for these changes.

HB 1168 contemplates a forward-looking approach to interest calculation while leaving room for interest calculation for prior periods on a case-by-case basis. This will conserve public resources, but allow the interest for prior periods to be entered into the records whenever the parties believe that the likelihood of collecting prior interest is worth the cost of the calculations.

This bill originally asked that the public authority, which is the Department of Human Services in execution of its duties under the state plan, thus includes the Regional Child Support Enforcement Units, be responsible for

calculating interest on obligations that first become arrearages after January 1, 2002. The House delayed that date to July 1, 2002 because of our need to continue cleaning up balances on FACSES.

- This would give us time to program FACSES to handle the calculations.
- Nothing would preclude the calculation of interest for arrearages that became due prior to that date. If interest were to be charged,
  - The calculations for periods before July 1, 2002 would need to be done by an individual or entity other than the public authority, and
  - We would enter the interest calculations in the official records after a judge approved them.
- We would enforce the collection of interest just as we enforce principal collection.

As a practical matter, in July 2002, we would see little change since we would be tracking what is due and not paid during that month.

- Beginning in August, we would make an interest calculation on the unpaid balances for the previous month. This interest would be recorded as an additional debt owed by the noncustodial parent. As collections are received, the collections are applied
  - First to the current support for the month,
  - Then to the outstanding interest,
  - Then to the oldest balance due at the end of the preceding month within the federal distribution categories.
- We intend to do the interest calculation only once a month. If we do it every day, the cost for CPU time will exceed the benefits. Also, the payment ledgers will grow with an entry for each day's interest calculations, further complicating their usability.

There are some administrative items that we need to consider as we implement interest accrual. For example, we need to closely track receipts from income withholding orders. When someone is paid weekly, the funds

are to be sent in weekly. Because some months will have five paydays and others only four, the family will not receive the full amount each month. However; over a three-month period, the full amount will be paid. A similar situation occurs when a person is paid every two weeks which results in 26 pay periods per year. Again, over time, the monthly amount will vary but the full amount will be paid every six months. Also, paydays and therefore income withholdings, do not necessarily coincide with the due date on the court order. These are further complicated because funds are withheld from paychecks in one month and we receive the funds in the next month. We treat those payments as receipts for the month in which we receive them.

We also need to do some customer education on interest charges on arrearages before the law becomes effective.

- People are used to not having interest charged on the arrearages, or to receiving interest payments. Once this is implemented, the front line customer service staff at the regional offices, the clerks of court and the state office will be swamped with calls.
- Monthly billing documents that go to about 4,500 obligors should be revised to show the interest component. This will take some programming and testing time.
- Some people may elect to pay off their balances instead of incurring 12% interest. We expect to notify people of this option.
- We may look at some sort of amnesty program as some states have done to get more people to pay voluntarily. This will take considerable thought and research as well as time to properly implement.

The House also amended the bill by adding Section 2. This amendment is intended to assure that people subject to child support orders will be informed that the failure to make timely payments will result in interest charges.

We ask that you consider the attached amendment. In Martin v. Rath, the North Dakota Supreme Court applied N.D.C.C. 9-12-07 as the basis for selecting the method of calculating the required interest. N.D.C.C. 9-12-07 provides for three options on how payments must be applied when a debtor owes several obligations to another party and makes a payment, in whole or in part, which is applicable equally to two or more such obligations. At the time of payment

- If the debtor selects a particular obligation, the payment must be applied to that obligation.
- If the debtor makes no selection, the creditor may apply the payment to any obligation due from the debtor.
- If neither party makes a selection then the payment must be applied in the following order, and if there is more than one obligation of a particular class, to the extinction of all in that class ratably.
  - Interest due at the time of performance
  - Principal due at the time of performance
  - The obligation earliest in date of maturity
  - An obligation not secured by a lien or collateral undertaking
  - An obligation secured by a lien or collateral undertaking

Since each month's past due child support is a separate obligation and we have cases that cover many years, the potential for adequately programming a computer to cover all these options would be extremely limited. For example, an obligor who has not made payment for 10 years would have 120 options to apply a payment. Should the obligor not make an election, the creditor may then choose to apply the payment to any of the 120 missed payments. If neither selects, then we would apply the payments according to the above third option.

Our amendment would bypass this 1877 law and apply payments, first to interest and then to principal, to the oldest obligations using the federal debt assignment categories that we must follow.

We will be happy to answer questions.

Prepared by the North Dakota
Department of Human Services
02/14/01

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1168

Page 1, line 16, replace "that" with "the earliest" and, after "principal" insert "of that arrearage"

Renumber accordingly

Testimony HB1168
Wednesday February 28, 2001 Human Service Committee
Red River room

Good morning Chairman Senator Lee and members of the Human Service Committee,

My name is Susan Beehler, an unpaid lobbyist for R-KIDS, Remembering Kids in Divorce Settlements, a working mom with 5 children, a custodial parent and a wife to a non-custodial parent, a girl scout leader to two troops in Mandan, and training to become a advocate for AARC.

We are opposed to HB1168 for three reasons.

1. The lack of accountability the child support office has.
2. Accurate arrearages are difficult to obtain from Child Support Enforcement and to verify interest is going to be attached to unreliable figure.
3. Inefficiency. Interest is or could be difficult to figure. It takes anywhere from 9 months over a year to have an adjustment now. The manpower is already running slow or overworked, the interest figuring will detract from getting child support orders already in place, enforced and modified, thus delaying support to the children.

Lack of accountability

As an obligee I have not been able to receive a consistent statement of the arrearages owed to the state and me. Minnesota has a court order to collect $100 And North Dakota says he is supposed to pay $225. No one has explained how or why my support order could have been lowered in Minnesota without my knowledge and why the North Dakota order is not being enforced. Currently there is no way to settle an error if either the non-custodial parent or the custodial parent believes an error was made. In passing this bill you will be giving more power to the agency. There is no way to protest or contest amounts without going through a lawsuit and costing a bundle of money especially if the amount is less than $500, it would cost more than that to fight for your money even if it was shown you were owed it. There is no agency to turn to when you believe you have an error in your child support record.
When the automated system started up I paid close attention to whether or not my support was sent from Minnesota and when our state showed it being received.

3/2/99 I received notice the system was changed to the disbursement center. On 3/3/99 the Minnesota automated line that requires a pin number from your caseworker showed I was to have received a $100 payment. I never received that payment. On 3/15/99 I left a message with my problem for my Minnesota case worker, she responded by letter dated 3/16/99 said she could not answer as to what had happened to the payment, and directing me to talk to North Dakota. I did. They have no record. They said they would look into it but they have never responded. This is what I told the House committee, after testifying that week I received a check for a larger amount, Minnesota had not received a recent payment in this amount, a year ago they did. Where is my interest on that money, the office held it and are not accountable.

On several occasions I have requested the Child Support office to give me the arrearages owed to the state and to myself.
12/24/96 the clerk of court's office shows my arrears at 24,572.72
8/5/97 thru 1/25/99 I had received $1579; I should have received a total of $7200
$7200 minus $1579, the amount of my arrearage at $5631 for that time period
If you add:

$24,572.72
+ 5,631.00 It comes to $30023.72

The record shows on1/25/99 $28396.72
There is a difference of $ 1627.00 from my figures and the clerk's record.

WHY? Who is accoutable for this?

I do not know what the state is owed or what they kept, I guess that paper I signed in 1984 excludes me from knowing. We have many members that have problems with missing money and because it is usually under $500, they give up trying to resolve the issue. I have a clipping of a letter to the editor of another unhappy custodial parent.

This bring me to our second reason
2. Accurate arrearages are difficult to obtain
The Bismarck Tribune tells of one person trying to determine the arrearage on his account when he wasn't supposed to have one.
Simply put if you think you are owed money or you do not owe money whatever the agency says is the gospel truth.

There is no effective way for the "customer" as the enforcement center refers to us, to contest any finding they have. Child Support enforcement has as much power as the IRS.

Please do not give them more power, this bill will do that, and how is the "customer" going to disagree with the way they figured interest when the principal can't even be established.

Reason #3 Inefficiency

Interest is or could be difficult to figure.

In 1994 I approached the director of HS at that time, Bud Weisman, and I requested the child support guidelines be reviewed. He asked my suggestion as to how I thought support should be figured. At that time I felt a straight percent with certain allowable deductions would be a simple way to go, it would have been similar to any other payroll deduction, thus eliminating the need for so many reviews and modifications. The parent's income would go up and the support would follow immediately. The hand of the state wants to be in the "cookie jar".

His response was we can't use percentages, the clerks wouldn't be able to figure the support. I thought that was a lame excuse. A payroll clerk makes this kind of computation to figure FICA which is a percentage and has limitations every time payroll is done.

The Human Service Department is now able to figure complicated interest formulas and 6 years ago they couldn't multiply 14% to someone's pay?

If these interest calculations go anything like having a modification done, the customers will just have to resign themselves to the poor service they already receive and compound it with yet another delay. The manpower will be going for additional services when they are not efficiently delivering the services of enforcement and collections. I have included timelines in a request for a review and modification of cooperating non-custodial parent and non-cooperating custodial parent. Both in the end ended up with three months in arrears. It is the "nature of the beast", the child support system. The agency actually perpetuates a system that in and of itself will create arrearage with or without the cooperation of the parent.

We believe when the department can do all requested uncontested modifications in 90 days or less than let them approach you to add the additional manpower to go after interest.

Until than our resources need to be used to improve the system and get the money to the children, not add more bureaucracy, to a gluttonous agency.

We urge you to vote NO to passing HB1168
No Accountability
Accurate arrearages are difficult to obtain
Inefficiency

A modification timeline for a cooperating non-custodial parent

2/10/00 A request for a modification, the same date liberal visitation is granted to the non-custodial parent, the letter is responded to immediately all necessary forms and the latest tax return included, 1999 had not yet been completed. According to the guidelines based on information at this time child support would be around $371 a month.

7/00 A letter comes requesting a tax return again and update information because too much time has lapsed since 2/00.

9/4/00 after receiving the stipulation to raise the child support from $225 to $460, non-custodial parent ask if the tax exemption for the child could alternate every other year even though the child support was figured at giving him the deduction, yet the custodial parent will be receiving it. Also asked if a clause could be added to adjust settling medical bills. The office said a attorney would have to be hired even though the custodial parent had agreed to the terms. Didn't pursue any further.

9/25/00 The office had received stipulation agreeing to increase.

10/20/00 Court given notice to amend.

10/25/00 The order is sent to the non-custodial parent, but nothing about when it would be withheld from check or any instructions on how to handle the increase.

11/30/00 A new withholding order is completed.

1/4/00 Receives notice that there is an arrearage of 587.50 and it was be reported to the credit bureau as a unpaid debt.

The non-custodial parent complied and did not dispute amount. The modification took a total about 10 months before any new support was received by mother.

A modification timeline for a non-cooperating non-custodial parent

11/1999 Review requested

1/14/00 Letter is received saying that a review will be done in 35 days, that would make it over 3 months just to start the review.

5/26/00 Receive notice that the non-custodial parent had not furnished the necessary information to conduct the review, so they were imputing his income at an increase of 10% per year. Child support amount would go from 225 a month to 492 a month.
Yet the stipulation enclosed only requested 412 a month, maybe a typo?

7/00 Custodial parent went to child support enforcement office, they said he wasn't cooperating and had till the end of the month to comply.

814/00 The non-custodial parent had sent in a 1099 showing income, the office said he had till8/21/00 to send in his last pay stub, a list of unreimbursed expenses and receipts and a 1999 tax return with
W-2's, 1099 and schedules.

9/6/00 Letter sent thanking for 1999 tax return, but now need 1995 thru 1998 return also W-2's even if they are just the spouses.
He has till 9/13/00 to comply.

10/25/00 Received notice that support is $412 per month and a hearing is scheduled for 12/22/00.

12/22/00 Neither parent attends hearing, Child support is set at $508 per month, and was due 9/1/00. So the non-custodial parent is in arrears for 3 months and has just received the notice of the change.

A withholding order is not in effect. So the order probably means nothing except maybe criminal charges.

Time for a non-complying non-custodial parent till judgement is made one year and two months, 14 months.

Both the non-complying non-custodial parent and the complying custodial parent are now 3 months in arrears just in receiving a modification. Possibly the non-complying will ended up another month a two behind before he gets notice of the change.

[¶3] Rath's payments of his child support obligation can be described, at best, as rare. Rath made his first three payments late and in installments. From February 1981 to October 1985, Rath made no payments at all. The only money Martin received from Rath during this time was tax return intercepts. Shortly thereafter, Rath began making regular payments averaging less than $100 per month.

[¶4] On June 18, 1997, Martin brought a motion in district court, requesting Rath's child support arrearage be entered as a judgment under N.D.C.C. § 14-08.1-05. On July 14, 1997, the district court issued an order finding the amount of the arrearage to be $8,063.81. The court, however, did not direct entry of a judgment based on that order.

[¶5] On March 12, 1998, Martin again brought a motion in district court, requesting the court vacate the July 14, 1997, order, direct the clerk of court to compute interest on the arrearage at 12 percent per annum, and further direct the clerk to docket a money judgment against Rath for $22,971.60 in principal, and $19,778.80 in accrued interest, as of March 9, 1998.

[¶6] On June 5, 1998, the district court issued an order vacating its July 14, 1997, order, and directing the clerk of court to correct the arrearage and docket a judgment reflecting that as of April 3, 1998, Rath owed $6,725.97 in principal and $22,886.40 in interest, for a total judgment of $29,612.37. The court ordered the clerk to compute the interest on the principal at 12 percent per annum, with each payment on the obligation first going to principal with no reduction in interest until principal had been paid in full.

[¶7] On June 10, 1998, judgment was entered consistent with the district court's order. Martin has appealed, and Rath has cross-appealed. We consider the cross-appeal first.

II

[¶8] In his cross-appeal, Rath argues the district court should have dismissed Martin's motion as res judicata because the issue presented could have been raised at earlier proceedings. Specifically, Rath argues the September 11, 1996, and the July 14, 1997, orders are final orders that preclude raising the issue of interest after the issuance of the orders. We disagree.

[¶9] The September 11, 1996, order was issued after a hearing was held to review the monthly payment Rath was making under income withholding orders. The statutory scheme for child support clearly envisions periodic reviews of child support orders to ensure support is consistent with the guidelines. Zarrett v. Zarrett, 1998 ND 49, ¶ 8, 574 N.W.2d 855. The doctrine of res judicata does not apply to

matters which are incidental or collateral to the determination of the main controversy. Richter v. Richter, 126 N.W.2d 634, 637 (N.D. 1964). Here, the periodic review was the only issue of the proceeding. Collection of child support arrearage clearly was incidental or collateral to that issue. Consequently, the September 1996, order does not preclude Martin from later asserting a claim for interest.

[¶10] The July 14, 1997, order determining the amount of child support in arrearage to be $8,063.81 was issued after Martin made a motion to reduce the amount to a judgment under N.D.C.C. § 14-08.1-05. No judgment was entered under this order. On March 16, 1998, Martin filed a motion under Rule 60(b), N.D.R.Civ.P., requesting the July 1997, order be vacated and a new order issue granting her interest on the arrearage. The district court granted the motion and issued a corrected judgment, finding a mistake entitled Martin to relief under Rule 60(b), N.D.R.Civ.P.

[¶11] We review the granting of a motion under Rule 60, N.D.R.Civ.P., for abuse of discretion by the district court. Peterson v. Peterson, 555 N.W.2d 359, 361 (N.D. 1996). A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner. Id. An action is arbitrary, unreasonable, or unconscionable if the court's decision is not the product of rational mental process. Id.

[¶12] Rule 60(b), N.D.R.Civ.P., provides in relevant part:

RULE 60. RELIEF FROM JUDGMENT OR ORDER

* * * *

> (b) Mistakes -- Inadvertence -- Excusable Neglect -- Newly Discovered Evidence -- Fraud -- Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment or order in any action or proceeding for the following reasons: (I) mistake, inadvertence, surprise, or excusable neglect; . . . or (vi) any other reason justifying relief from the operation of the judgment. The motion must be made within a reasonable time, and for reasons (I), (ii), and (iii) not more than one year after notice that the judgment or order was entered in the action or proceeding if the opposing party appeared . . . .

[¶13] Rath argues none of the conditions for granting a Rule 60(b), N.D.R.Civ.P., motion exist, and asserts such motions should be limited to situations when the moving party has had default judgment entered against them. Although Rule 60(b), N.D.R.Civ.P.

may be more leniently construed regarding default judgments, it is by no means limited to cases of default. See, e.g., CUNA Mortgage v. Aafedt, 459 N.W.2d 801, 803 (N.D. 1990).

[¶14] In Martin's affidavit, she states the Regional Child Support Enforcement Unit initially assisted her in obtaining a judgment on the child support arrearage. Martin claims she told the Unit she wanted to pursue interest on the arrearage. The Unit indicated it was unsure if interest could be awarded, but if it could the Unit would be able to raise the issue. However, after filing the June 1997 motion, the Unit told Martin it would not pursue the interest, and she would have to retain a private attorney to seek the interest award. Martin states she thought she would be able to pursue the interest award with a private attorney at any time after the filing of the June 1997 motion. Martin asserts it would be unjust to restrict her recovery to the Unit's motion, because the Unit did not seek interest as she had requested and had left her with the impression that interest could be sought at a later date. We agree.

[¶15] Although the posture of this Rule 60(b) motion is somewhat unique, based on the record, we do not believe the district court abused its discretion when it found a mistake had been made justifying relief under Rule 60(b), N.D.R.Civ.P.

III

[¶16] In her appeal, Martin argues the district court erred in applying the excess payments to principal first, rather than to interest first. Martin contends under the "United States rule" any payment should be applied to accrued interest first, and any portion exceeding accrued interest should then be applied to the principal amount owed on a judgment.

[¶17] To decide this issue, we must first determine if the judgments created under N.D.C.C. § 14-08.1-05 are to be treated as ordinary judgments under state law.

Section 14-08.1-05(1)(a), N.D.C.C., provides:

> 1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:
>
> > a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, and must be entered in the judgment docket, upon filing by the judgment creditor or the judgment creditor's assignee of a written request

> accompanied by a verified statement of arrearage or certified copy of the payment records of the clerk of district court maintained under section 14-09-08.1 and an affidavit of identification of the judgment debtor, and otherwise enforced as a judgment;

Section 14-08.1-05, N.D.C.C., was created to bring North Dakota into compliance with federal child support enforcement guidelines. Baranyk v. McDowell, 442 N.W.2d 423, 425 (N.D. 1989). Section 1 of Senate Bill 2432, codified at N.D.C.C. § 14-08.1-05, was intended to comply with section 9103 of Public Law 99-509. Id. The legislative history indicates the primary concern of section 9103 was to prevent retroactive modification of child support orders. Hearing on S.B. 2432 Before the Senate Human Services and Veterans Affairs Committee, 50th N.D. Legis. Sess. (Jan. 29, 1987) (testimony of Blaine Nordwall of the Department of Human Services). In his testimony, Nordwall explained:

> [I]n spite of that limited purpose, the federal law specifically requires that retroactive modification be precluded by making unpaid child support obligations into judgments. The bill is intended to do that, while at the same time, avoiding any amendment to existing requirements for the docketing of judgments. . . . [A]n unpaid child support obligation would become an undocketed judgment, like existing judgments under state law, which could not be docketed without following the existing North Dakota procedures. (Emphasis added.)

Hearing on S.B. 2432, supra (testimony of Blaine Nordwall).

[¶18] The legislative history indicates the undocketed, automatic judgments for past-due child support obligations are to be treated like ordinary judgments under state law. Baranyk, 442 N.W.2d at 426. The only distinction is that the judgment cannot be docketed without following the procedures outlined under statute, in order to avoid imposing numerous monthly docket entries on clerks of court, and to avoid the need to search such docket entries in real estate transactions. Hearing on S.B. 2432, supra (testimony of Blaine Nordwall).

[¶19] We next consider whether the United States rule applies as Martin suggests. The United States rule is a common law rule which provides that absent an agreement or clearly expressed intention by the parties, payments must first be applied to accrued interest, with any excess applying to the principal balance. See Devex Corp. v. General Motors Corp., 749 F.2d 1020, 1024 & n.6 (3d Cir. 1984);

see also Langton v. Kops, 41 N.D. 442, 171 N.W. 334, 336 (N.D. 1919) (discussing the United States Rule).

[¶20] In North Dakota, section 9-12-07, N.D.C.C., governs the application of payments when there are multiple obligations. Statutory principles govern over general common law if there is a conflict. N.D.C.C. § 1-01-06. Compare Gayer v. Gayer, 952 P.2d 1030 (Or. 1998) (applying common law principles to reach a similar result).

[¶21] The principles which guide this situation are found in N.D.C.C. § 9-12-07(3).

> 9-12-07. Performance when there are several obligations -- Application. When a debtor under several obligations to another does an action by way of performance, in whole or in part, which is applicable equally to two or more of such obligations, such performance must be applied as follows:
>
> 1. If, at the time of the performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation is manifested to the creditor, it must be applied in such manner.
>
> 2. If no such application is then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation the performance of which was due to him from the debtor at the time of such performance, except that if similar obligations were due to him both individually and as a trustee, unless otherwise directed by the debtor, he shall apply the performance to the extinction of all such obligations in equal proportion. An application once made by the creditor cannot be rescinded without the consent of the debtor.
>
> 3. If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order, and if there is more than one obligation of a particular class, to the extinction of all in that class ratably.
>
> a. Of interest due at the time of the performance.
>
> b. Of principal due at the time of performance.

c. Of the obligation earliest in date of maturity.

d. Of an obligation not secured by a lien or collateral undertaking.

e. Of an obligation secured by a lien or collateral undertaking.

N.D.C.C. § 9-12-07.

[¶22] Rath argued both he and Martin had elected to apply his payments toward principal under N.D.C.C. §§ 9-12-07(1) or (2). Such elections, if made, would preclude the application of N.D.C.C. § 9-12-07(3). However, the record does not support Rath's assertion. Nothing in the record indicates Rath or Martin ever made such an election, and, therefore, N.D.C.C. § 9-12-07(3) controls.

[¶23] In N.D.C.C. § 9-12-07(3) subdivisions (a) to (e) constitute the particular classes of obligations referred to in the first paragraph of subsection (3). See Jessup Farms v. Baldwin, 660 P.2d 813, 821 (Cal. 1983) (interpreting Cal. Civ. Code 1479, which is almost identical to N.D.C.C. § 9-12-07). Accordingly, to construe the statute so all sections are given effect, subsection (3)'s ratable application for "more than one obligation of a particular class" applies only when there is more than one obligation within a particular subdivision of subsection (3). Id. at 822-23. Thus, when obligations have different maturity dates, payments are applied to the obligation earliest in date of maturity, first to interest, then to principal. However, if multiple obligations have the same maturity date (and also share the same characteristic of being secured or unsecured), a payment would be applied ratably among all of them. Id. at 823.

[¶24] In this case, a child support obligation becomes a judgment as a matter of law when it becomes due and unpaid. Darling v. Gosselin, 1999 ND 8, ¶ 7. Thus, the maturity date is the date the obligation becomes due and unpaid. Therefore, each unpaid child support obligation in this case has a different maturity date, and consequently all such unpaid child support obligations are not of the same class as defined by N.D.C.C. § 9-12-07(3).

[¶25] Following the principles under N.D.C.C. § 9-12-07(3) payments applied to arrearage should be applied first to any interest due on the earliest maturing child support payment, and then to any principal due on that payment, with any remaining excess going to the next earliest maturing support payment, to be applied in the same manner, first to interest, then to principal.

[¶26] Because the judgment here requires the payments to be applied first to reduce the principal and then the interest, it is contrary to N.D.C.C. § 9-12-07(3), and therefore erroneous.

IV

[¶27] We reverse and remand for entry of judgment consistent with this opinion.

[¶28]

William A. Neumann
Mary Muehlen Maring
Carol Ronning Kapsner
Dale V. Sandstrom
Gerald W. VandeWalle, C.J.

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