MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

2160

2001 SENATE HUMAN SERVICES

SB 2160

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2160

Senate Human Services Committee

☐ Conference Committee

Hearing Date January 17, 2001

Tape Number	Side A	Side B	Meter #
1	X		
January 30, 2001 3	X		22.5
Committee Clerk Signature			

Minutes:

SENATOR LEE called the committee to order and roll was taken with all members present. Senator Lee asked Vice-Chairman Kilzer to conduct the hearing while she testified on another committee. SENATOR KILZER opened the hearing on SB 2160.

BARBARA SIEGEL, Policy Administrator , Child Support Enforcement division with the Department of Human Services, introduced the bill and recommended an amendment. (Written testimony). SENATOR MATHERN: In section 4 it changes from 90 days to 180 days. Are employers not responding? MS. SIEGEL: Employers who have failed to comply with withholding order and it would allow us 180 days rather than 90 days to commence that order. SENATOR KILZER: In section 2, is that problem happening often? MS. SIEGEL It isn't frequent. Child support is not protected.

SUSAN BEEHLER, R-KIDS, opposes the bill (written testimony). SENATOR FISCHER: Mr. Schwindt, is there a way for more security? MR. SCHWINDT: There could be a pin number,

but it is public record information as far as the court proceedings go. SENATOR KILZER requested a review of the fiscal note. MS. SIEGEL: 2000 searches per year is the starting figure with each search costing about $7. And that is $14,000 per year; $28,000 per biennium. $2. Of the search fee goes to Secretary of State and $5 goes to the county. Under SWAP, the regional offices are responsible for 100% of all the costs of administration of the program so that $20,000 would be a county saving as the regional offices are the ones paying. The loss of revenue on those searches then would be $28,000 for the biennium - $8,000 for the Secretary of State and $20,000 for the counties. The $18,480 for the biennium for DHS comes from under SWAP even though the regional pay 100% of the county funds, those expenditures are available for 66% Federal match. When we get the Federal match, that comes to Dept of Human Services under SWAP. For filing a lien we estimate we will be doing 100 liens per year. Each lien filing is a $15 charge; of that $5 goes to Secretary of State, $10 goes to county. So that figure $3000 per biennium would be a saving to regional offices which is county. There would be copying costs to Register of Deeds.

Opposition to SB 2160.

MARGARET KOTTRE, R-KIDS, opposes bill. The bill needs to be worked so lay person can understand it. Punishment to payer for garnishment is already assumed because employer charges $3 for every payment.

The hearing was closed on SB2160.

January 30, 2001, Tape malfunctioned.

Discussion was held. SENATOR MATHERN moved the amendments from Barb Siegel. SENATOR FISCHER seconded the motion. Roll call vote carried 6-0. SENATOR MATHERN

moved a DO PASS AS AMENDED. SENATOR KILZER seconded it. Roll call vote carried 6-0. SENATOR KILZER will carry the bill.

FISCAL NOTE

Requested by Legislative Council

12/26/2000

Bill/Resolution No.: SB 2160

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			($9,000)	($21,780)	($9,000)	($21,780)
Expenditures						
Appropriations			$21,780	($21,780)	$21,780	($21,780)

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
			($9,000)			($9,000)		

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

This bill exempts the Child Support Enforcement Program from fees charged by the Secretary of State and by the Registers of Deeds. This results in a net cost savings to the counties, a loss of general fund revenue generated by the Secretary of State and a loss of retained funds to the Department of Human Services.

The RCSEU's expenditures are estimated to decrease by $33,000, for fees they would pay to the Secretary of State ($9,000) and to the Register of Deeds ($24,000). The net cost savings to the counties would be $9,000.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Secretary of State would no longer collect approximately $9,000 in fees which are deposited into the General Fund.

The RCSEUs decrease in expenditures would cause the Department of Human Services to realize a decrease in retained dollars based upon the SWAP legislation passed in the 1997 Legislative Session.

   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.*

No effect on state expenditures.

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

The Department of Human Services would need an additional $21,780 in General Funds per biennium to replace the loss of retained funds as noted in 3.A. above.

Name:	Brenda M. Welsz	**Agency:**	Dept. of Human Services
Phone Number:	701-328-2397	**Date Prepared:**	01/12/2001

Prepared by the North Dakota
Department of Human Services
1/16/01

PROPOSED AMENDMENTS TO SENATE BILL NO. 2160

Page 6, line 3, overstrike the second "or" and insert immediately thereafter ",", and after "chapter" insert ", or chapter 35-34"

Renumber accordingly

Roll Call Vote #: 1 Date: 1/30/01

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2160

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments

Motion Made By Sen Mathern Seconded By Sen Fischer

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 _____

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

Bob Siegel's amendments

Date: 1/30/01

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2160

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

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	✓				

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

SB 2160: Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2160 was placed on the Sixth order on the calendar.

Page 6, line 3, overstrike the second "or" and insert immediately thereafter an underscored comma and after "chapter" insert ", or chapter 35-34"

Renumber accordingly

2001 SENATE APPROPRIATIONS

SB 2160

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2160

Senate Appropriations Committee

❑ Conference Committee

Hearing Date February 12, 2001

Tape Number	Side A	Side B	Meter #
Tape #1	x		0.0-6.4
Committee Clerk Signature			

Minutes:

Senator Nething opened the hearing on SB2160.

Barbara Siegel, Department of Human Services, spoke for the bill. This pertains to fees for indexing and copying.

Senator Bowman: Have you checked this out with the Register of Deeds -- County Commissioners not opposed?

Barbara Siegel: Not sure, there has been discussion; no concerns from the Register of Deeds - cost of copying not charged in regional offices anyway.

Senator Nething: Fee waving?

Barbara Siegel: Yes.

Susan Beehler (Lobbyist #451), Remembering Kids in Divorce Settlements (R-KIDS), testified in opposition. Believes that this has been in effect since '97 and the department has been

inactive in liens and enforcement of child support laws --- there have been no liens -- why this bill when they not doing it? Asking for fiscal note that is/should be zero!

Senator Nething: Did you testify - similar to this - at the Human Services Committee hearing?

Susan Beehler: Yes, and against amendment.

No additional testimony. Hearing closed.

February 13, 2001 Full Committee (Tape #3, Side A, Meter No. 29.4-36.0)

Senator Nething reopened the hearing on SB2160.

Discussion on the bill and fiscal note.

Senator Robinson moved a DO PASS; Senator Thane seconded. Roll Call Vote: 13 yes; 0 no; 1 absent and not voting.

Floor assignment back to original committee, carrier to be Senator Kilzer.

Date: 2-15-01

Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2160

Senate Appropriations Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Senator Robinson Seconded By Senator Thane

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas	✓				
Harvey Tallackson	✓				
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp	✓				
Tony Grindberg					
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Senator Kilzer

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

REPORT OF STANDING COMMITTEE

SB 2160, as engrossed: Appropriations Committee (Sen. Nething, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2160 was placed on the Eleventh order on the calendar.

2001 HOUSE HUMAN SERVICES

SB 2160

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2160

House Human Services Committee

☐ Conference Committee

Hearing Date March 12, 2002

Tape Number	Side A	Side B	Meter #
1	x		3539 to end
1		x	1 to 877
3	x		300 to 1090
Committee Clerk Signature	Connie Easton		

Minutes:

Vice Chair Devlin: I will open the hearing on SB 2160 and take testimony in support.

Barbara Siegel - Policy Administrator, Child Support Enforcement Division, Dept. Of Human Services: SB 2160 was introduced at the request of the Department to provide amendments to child support laws. (See written testimony)

Rep. Weisz: In Section 5 you are omitting the fifth element, the writ of execution, what are the other element that would be omitted?

Siegel: On page 4 of the bill, subsection 5, actually when this law was passed there were 4 elements already omitted, we are just omitting a fifth.

Rep. Metcalf: I am referring to Section 4. Has there been a real problem with employers that refuse and go out of their way to actually hold the money and not send it over?

Siegel: Not frequent, but when it happens it is quite a grievance. You has situations where the employer is not financially stable and is withholding the money from the non custodial parent's income and not turning it over and the next thing we know is he is out of state.

Rep. Niemeier: To continue with what Rep. Metcalf said, by changing that timing to a six month period, that means that the child in question is going without support for not only 3 months, but for 6 months. Is that the way this would read?

Siegel: What happens is we don't always know. Extending this time period would not delay any action by the Child Support Enforcement Program, however we're not always aware of it in time, and we are not aware and we can't track down the person to initiate the contempt proceeding and the time period expires, we can do nothing. So the section to extend this is not to delay any action of ours, as soon as the program would become aware that their is a non compliance issue we would take the action.

Rep. Weisz: On judgments where you eliminate the statute of limitations, are they affected at all by bankruptcy?

Siegel: Child support as a general rule is not dischargable by most types of bankruptcy. There is a bill going through Congress as we speak, that would tighten this up even more.

Rep. Metcalf: On page 6 of your testimony, anytime they want 100% of County funds and I am not really sure exactly what you are saying? I would like a little more definition.

Siegel: Without going into a lot of details, under the SWAP Legislation, the regional child support offices expenditures are paid with 100% County funds. What happens if they are out searching records and the register of deeds is charging for copying or the cost of accessing the system. That cost would be paid by the Regional Child Support offices and indeed it is 100% County funds under SWAP.

Rep. Metcalf: I am still not sure of this. It says the revenue is more than offset by the savings at the Regional Child Support office. Is that just exactly what you got through telling me?

Siegel: Maybe it would be best if I briefly explained the fiscal note. How we can up with the numbers, is first of all with searches of records, we estimate we will be doing approximately $2000 per year. Each of those searches averages $7 per search. Of that $7, $2 goes to the Secretary of State, and $5 goes to the County. Based on those figures, per biennium that is $28,000. All $28,000 would be paid at 100% County Funds. However, there is a loss of revenue to the counties at $20,000 because that $5 per search. And a loss of $8000 to the Secretary of State, because they receive $2. The next savings to the counties just in searches is $8000. The regional offices would be paying the $28,000, the county would have a loss of revenue of $20,000. We can continue through that with filing of liens which is $15 per. $10 goes to the county, $5 goes to the Secretary of State. We think we are going to do 100 liens per year. That's $3000 per biennium, a portion of that goes to the counties and that would be $2000, $1000 to the Secretary of State. We have a savings of $3000. So to the counties again, they would be paying it with all county funds. A net savings to the county of $1000. This is not clarifying is it? The regional offices would truly be paying these fees we are trying to be exempt from. You can also see there is a loss of revenue to the Dept. Of Human Services and even though the cost is paid by the regional offices, there's match money coming in from the Federal Government at 66%, which is retained by the Department of Human Services.

Rep. Metcalf: Do you understand this?

Vice Chair Devlin: Yes, I do. In a nutshell, Regional Child Support are paid for by county funds, so really if you are charging county funds for a search in one county and you are paying it out

because you are paying for the Regional Child Support thing, it is just a wash. County dollars are paying for county dollars.

Rep. Cleary: On page 5, line 22, does that mean that the employer, if you received a request, per response. If he doesn't respond within 11 days that he will be charged $25 a day?

Siegel: That is what the law says. I have been with Child Support for ten years and have never know it to happen. It is something that we can compel compliance with and it is allowable under law.

Cathy Haugen - Director of Cass County Social Services: We haven't taken a position on this bill, the County Directors Association, be we do support the section that eliminates the transfer of fees. It is essentially a book keeping function. We may save a little money in administration costs. We are supporting this bill as a whole, in particularly that section.

Susan Beehler - Lobbyist for R-Kids: We are asking that you do not pass this bill as it is written.

Vice Chair Devlin: Questions for Miss Beehler. Further testimony on SB 2160. Seeing none, any further neutral testimony on SB 2160. I will close the hearing on SB 2160.

COMMITTEE WORK:

CHAIRMAN PRICE: Let's go to SB 2160. Any comments on this bill?

REP. GALVIN: I will move a DO PASS.

REP. KLEIN: Second.

CHAIRMAN PRICE: (Committee discussion.) This fiscal note is prior to the Senate amendments so we will verify before we type it up.

REP. NIEMEIER: I have questions about Section 1, paragraph 2 - the statutes of limitations thing. In the previous paragraph all of that was struck and then it is written in on 2 - I just don't get it.

CHAIRMAN PRICE: They added some additional language to it.

REP. WEISZ: My understanding of the main difference in the language was they added lien along with judgment. Currently the old law already said they were subject to the statutes of limitations. It appeared there was a problem even though the law stated that. The change made it more specific.

CHAIRMAN PRICE: (More discussion.) Everybody comfortable with this bill? Seeing no other hands the clerk will cal the roll on a **DO PASS and rereferred to Appropriations if needed.**

14 YES 0 NO 0 ABSENT CARRIED BY REP. METCALF

Date: 3-12-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2160

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep. Galvin Seconded By Rep. Klein

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) 14 No 0

Absent 0

Floor Assignment Rep. Metcalf

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

REPORT OF STANDING COMMITTEE

SB 2160: Human Services Committee (Rep. Price, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2160 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2160

Testimony SB 2160
Wednesday January 17, 2001 Human Service Committee
Red River Room 9 AM

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.

R-Kids is not for SB2160 as written.

We are asking for some amendments or a do not pass as written. The amendments would clarify an issue that was brought up in Martin vs. Rath (see attached) and would also remedy the concerns we have for HB1108 in that they want to charge12% interest, we are purposing charging fees of one time, of 4% as allowed in Federal code.

I will first go into why we are opposed to SB2160.

Lines 18 and 19 seem to be inconsistent with how the department actually figures late support. The department because of wage withholding may receive support weekly, biweekly, monthly, dependent on the pay period of the income payor and the income payor has 7 days to get it to the agency, so many times the correct support is not there by the child support order due date, thus records could show a obligor is late but has no control over the income withholding. US code 42 Sec 664, the federal code (see attached my pg #8of38, 9of38) allows the state to determine when due. Our amendment would make the Century Code more consistent with reality. I have also attached timelines of actual cases of a cooperating and a non-cooperating non-custodial parent for a modification. Both cases went into arrears three months.

Pg 2 Lines 9-14 are too punitive to a non-custodial parent, it does not give any compassion to a parent that may have additional children to support and the arrearage may have occurred do to a disability or crisis he may have had little control over. Children born before this law was in effect may now suffer consequences of their parents choices, is it fair to one child to have access to the parent's resources and not the other. There is no exceptions, no exemptions; it is all or nothing, a lifetime sentence. All children of a family need to be considered, that is

why the code has the protection and relief for judgements, just because this is child support the agency has to be barbaric, this is the millenium not the dark ages where people could be sold as slaves to pay a debt. Section 42 chapter 666 (Liens arise out of operation of law) We believe a lien in of itself is effective without the agency making the law without any due process.

On Lines 24 thru 26 is confusing members have much discussion as to what exactly this means. My guess it was an obligee that had a child in foster care now owes the state child support for taking care of the child. If this is what it means than, why is one child support debt being given preference over another. Or if it meant the custody switched and the obligor with past due arrearages is now the obligee, the past due support would not be collected, enforced.

If a child support order was because a child was in foster care why can't the child support obligation be enforced? If this was the intent why isn't there a fiscal note attached for lost revenue for not collecting the support.

This needs to be clarified, stricken or rewritten.

Page 4 Lines 27 thru 30 has a fiscal note, I find difficult to understand. Since 1997 how aggressive has the department been at executing liens? In asking at the Office of the Secretary of State, they thought no liens had been filed. The filing fee would be at least $15. Let's see if the department went after half of their 20000 cases that are in arrears that would be 300,000. Now it is going to cost $21,780. If they would go after that many it would probably be decades before it is collected. $21,780 does not seem enough of a fiscal note.

Page 5 lines 5 thru7 are too broad the federal code gives protection to information that can be accessed. 42 US Code Sec654 26 instructs the department to have in effect privacy rights (see attached) Currently anyone of you can call the 1-800 number and with any obligor or obligee access what they paid or were paid. Not much privacy there.

Last of the entire department has immunity but where is the accountability to us. They will take away all the regular avenues of the law that gives some protection and safeguards. We have no way to dispute any of their findings. Is this America?

AMMENDEMENTS would read as the

Any order directing any payment or installment of money for the support of a child is due per the order unless a wage withholding is in effect the due date would follow the pay period plus 7 days:

A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, child support order is not subject to (Century code that allows interest on judgements)must be entered in the judgment docket, upon filing by the judgement creditor ...etc.....

Page 2 lines 2 thru 5 leave as they were

Page 2
Eliminate #2 as written
and insert

Attach a late fee to overdue support in the amount of 4% as allowed in US code 42 section 654, this may not be compounded, any payments received go to support first and than apply to fee and the imposition of this fee may not directly or indirectly result in a decrease in the amount child support paid to the child. The fee when collected is paid to the family unless there has been an assignment of the support.

Page 2 lines 24 thru 26 If custody has switched from the obligor to the obligee. The Judgement may be forgiven in full or part as determined by the agency. An obligee owing support to reimburse foster care must be allowed at least 130% of poverty level as defined by federal guidelines anything above that is subject to execution of the child support judgement.

Page 4 line 4 leave as is do not make change to 180 days.

Susan Beehler 663-4728
susieqbee@prodigy.net

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.

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

1999 ND 31

Gloria Martin, f/k/a Gloria Rath, Plaintiff, Appellant and Cross-Appellee
v.
Rodney Rath, Defendant, Appellee and Cross-Appellant

No. 980262

Appeal from the District Court of Stutsman County, Southeast Judicial District, the Honorable John T. Paulson, Judge.
REVERSED AND REMANDED.
Opinion of the Court by Neumann, Justice.
Arnold V. Fleck of Wheeler Wolf, P.O. Box 2056, Bismarck, N.D. 58502-2056, for plaintiff, appellant and cross-appellee.
Cynthia G. Schaar-Mecklenberg of Paulson & Merrick, P.O. Box 1900, Jamestown, N.D., 58402-1900, for defendant, appellee, and cross-appellant, submitted on brief.

Martin v. Rath

No. 980262

Neumann, Justice.

[¶1] Gloria Martin appeals from the district court's order and corrected judgment. Rodney Rath cross-appeals. We reverse and remand.

I

[¶2] On June 4, 1980, Gloria Rath, now known as Gloria Martin, and Rodney Rath divorced under a decree awarding her custody of their minor children, and establishing Rath's child support obligation of $220 per month. The child support obligation decreased to $110 per month in October 1988 and terminated in May 1990 as the two children reached majority.

[¶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.

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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applying such procedure.

(2) In the case of withholdings made under subsection (a)(2) of this section, the regulations promulgated pursuant to this subsection shall include the following requirements:

(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than $500. The State may limit the $500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed $25 per case submitted.

(c) ''Past-due support'' defined

(1) Except as provided in paragraph (2), as used in this part the term ''past-due support'' means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

(2) For purposes of subsection (a)(2) of this section, the term ''past-due support'' means only past-due support owed to or on behalf of a qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent).

(3) For purposes of paragraph (2), the term ''qualified child'' means a child -

(A) who is a minor; or

procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) **Reporting arrearages to credit bureaus**

(A) **In general**

Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 1681a(f) of Title 15) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

(B) **Safeguards**

Procedures ensuring that, in carrying out subparagraph (A), information with respect to a noncustodial parent is reported—

(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency (as so defined).

(8)(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

(i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) of this section (which shall apply in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b) of this section, where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

(10) **Review and adjustment of support orders upon request**

will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan -

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency, and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met -

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law, or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 659(i)(5) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)(A) at the option of the State, impose a late payment fee

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on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the noncustodial parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658 of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate;

(24) provide that the State will have in effect an automated data processing and information retrieval system -

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(A) by October 1, 1997, which meets all requirements of this part which were enacted on or before October 13, 1988, and

(B) by October 1, 2000, which meets all requirements of this part enacted on or before August 22, 1996, except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(25) provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family;

(26) have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including -

(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify, or enforce support, or to make or enforce a child custody determination;

(B) prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(C) prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the

case;

(iii) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other State; and

(iv) the State shall maintain records of -

(I) the number of such requests for assistance received by the State;

(II) the number of cases for which the State collected support in response to such a request; and

(III) the **amount** of such collected support.

(B) High-volume automated administrative **enforcement**. - In this **part**, the **term** ''high-volume automated administrative **enforcement**'', in interstate cases, **means**, on request of another State, the identification by a State, through automated data matches with financial institutions and other **entities** where assets may be found, of assets owned by persons who owe child support in other States, and the seizure of such assets by the State, through levy or other **appropriate** processes.

(15) Procedures to ensure that persons owing overdue support work or have a plan for payment of such support. - Procedures under which the State has the authority, in any case in which an individual owes overdue support with respect to a child receiving assistance under a State **program** funded under **part** A of this subchapter, to issue an order or to request that a court or an administrative process established pursuant to State **law** issue an order that requires the individual to -

(A) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State **program** under this **part**; or

(B) if the individual is subject to such a plan and is not

incapacitated, participate in such work activities (as defined in section 607(d) of this title) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

(16) Authority to withhold or suspend licenses. - Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(17) Financial institution data matches. -

(A) In general. - Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State -

(i) to develop and operate, in coordination with such financial institutions, and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and

(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is

subject to a child support lien pursuant to paragraph (4).

(B) Reasonable fees. - The State agency may pay a reasonable fee to a financial institution for conducting the data match ***provided*** for in subparagraph (A)(i), not to exceed the actual costs incurred by such financial institution.

(C) Liability. - A financial institution shall not be liable under any Federal or State ***law*** to any person -

(i) for any disclosure of information to the State agency under subparagraph (A)(i);

(ii) for encumbering or surrendering any assets held by such financial institution in response to a notice of lien or levy ***issued*** by the State agency as ***provided*** for in subparagraph (A)(ii); or

(iii) for any other action taken in good faith to comply with the requirements of subparagraph (A).

(D) Definitions. - For purposes of this paragraph -

(i) Financial institution. - The ***term*** ''financial institution'' has the ***meaning*** given to such ***term*** by section 669A(d)(1) of this title.

(ii) Account. - The ***term*** ''account'' ***means*** a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(18) ***Enforcement*** of orders against paternal or maternal grandparents. - Procedures under which, at the State's option, any child support order ***enforced*** under this ***part*** with respect to a child of minor parents, if the custodial parent of such child is receiving assistance under the State ***program*** under ***part*** A of this subchapter, shall be enforceable, jointly and severally, against the parents of the noncustodial parent of such child.

(19) Health care coverage. - Procedures under which all child support orders ***enforced*** pursuant to this ***part*** shall include a

entitled to father's Internal Revenue Service (IRS) tax refunds which had been intercepted to pay father's Aid to Families with Dependent Children (AFDC) debt and back child support arrearage; parties had not stipulated that husband would receive intercepted refunds, and court's finding that it was in best interest of child for residential parent, father, to have intercepted funds was not sufficient reason to give money to him. State, Dept. of Health and Rehabilitative Services on Behalf of Cutrone v. Cutrone, Fla.App. 2 Dist.1994, 636 So.2d 531.

13. Interest

Rogers v. Bucks County Domestic Relations Section, E.D.Pa.1991, 773 F.Supp. 768, (main volume) affirmed 969 F.2d 1268.

Parents on whose behalf federal tax refunds had been intercepted for payment of past-due child support were not entitled to receive interest earned by agencies when those refunds were held for up to six months in interest-bearing accounts; there was no property interest created by Pennsylvania law, federal statute or regulation upon which claim for unjustly compensated taking could be based. Rogers v. Bucks County Domestic Relations Section, E.D.Pa. 1991, 773 F.Supp. 768, affirmed 969 F.2d 1268.

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

(a) Types of procedures required

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

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

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before October 1, 1996, if not otherwise subject to withholding under subsection (b) of this section, shall become subject to withholding as provided in subsection (b) of this section if arrearages occur, without the need for a judicial or administrative hearing.

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

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

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

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657(b)(4) or (d)(3) of this title in the case of overdue support assigned to a State pursuant to section 602(a)(26) or 671(a)(17) of this title, or, in any other case, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the noncustodial parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) Liens

Procedures under which—

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

(5) Procedures concerning paternity establishment

(A) Establishment process available from birth until age 18

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) Procedures concerning genetic testing

(i) Genetic testing required in certain contested cases

Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) Other requirements

Procedures which require the State agency, in any case in which the agency orders genetic testing—

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

(C) Voluntary paternity acknowledgment

(i) Simple civil process

Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) Hospital-based program

Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) Paternity establishment services

(I) State-offered services

Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

MISCELLANEOUS STATUTORY LIEN MSL-1

NORTH DAKOTA SECRETARY OF STATE/REGISTERS OF DEEDS
SFN 51244 (7-99)

LEASE TYPE. Please read instructions on back before completing.

TYPE OF LIEN _____

A. Filing Fee Instructions ☐ Check Enclosed

OR ☐ Please Bill Customer Billing Number:

B. File In: Statutory Lien Index Only

C. Name and Address of Debtor
If individual, last name first SSN/TIN:

Reserved for Filing Officer Use

D. Name and Address of Lien Holder SSN/TIN: Telephone Number:

E. STATEMENT OF LIEN

Amount $_____ For repairman's lien - amount agreed to or reasonable value, for insurance premium lien - amount and unpaid earned premiums, for child support lien - amount of past due child support. _____ (Date), _____ (Year)

Identify services provided or goods sold: _____

Lien holder hereby claims a lien on the following property:

G. Child support obligation is past due and a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last known address. _____ (Initial if applicable)

H. Contact Person Telephone #

I. Dated this _____ day of _____, _____.

_____
Signature

_____
Type Name, Company and Title

Subscribed and sworn to before me this

_____ day of _____, _____.

(SEAL)

_____
Notary Public

My commission expires _____

SFN 51244 (7-99)

MSL-1 INSTRUCTIONS

1. Verify for accuracy and correct spelling.
2. WHERE TO FILE:

   Insurance Liens are to be filed in the office of the Register of Deeds of the county or counties in which the property is located.
   Repairman's Liens are to be filed in the office of the Register of Deeds of the county in which the owner or legal possessor of the property resides.
   Vessel Liens are to be filed in the office of the Secretary of State.
   Unpaid Child Support Liens on personal property are to be filed in the office of the Register of Deeds in the county in which the personal property may be found or with the Secretary of State.
3. Refer to the User's Guide for further information. The Guide may be purchased from the Secretary of State's office.

The following letters correspond to the lettered sections on the front of this form.

INSERT LIEN TYPE: One of the above listed lien types must be inserted above the fee instructions.

A. FILING FEE INSTRUCTIONS: Clients may request to be billed for services. Upon approval a customer number is provided. This number needs to be typed on the form for accurate billing processing. Without a customer number, all fees must be paid at the time of filing.

B. FILE IN: Statutory lien index only.

C. NAME OF DEBTOR: List the name, complete mailing name of child support obligator, address, and social security number or tax identification number for whom services were furnished or goods sold or name of child support obligator. For a business begin with the first word or character not an article or punctuation mark. If an individual, enter last name, first name and middle name.

D. NAME OF LIEN HOLDER: List the name, mailing address, social security number or tax identification number and telephone number of the person supplying the services or goods.

E. STATEMENT OF LIEN: State amount agreed to or reasonable value of goods or services provided for repairman's lien, unpaid earned premium for insurance premium lien, or past due for child support and date the sale was made or services rendered if applicable. Insert services and or goods provided, if any.

F. DESCRIPTION: Describe property on which a lien is claimed. Include the quantity subject to the lien, if known. Describe make, model designation, and serial number including identification or registration number if any.

G. CHILD SUPPORT: Child support obligation is past due and a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last known address. Must be initialed if this is an unpaid child support lien on a vessel or personal property.

H. CONTACT PERSON: In order to facilitate the expediting of the filing, provide the name of the appropriate contact person with a telephone number.

I. SIGNATURES AND NOTARIZATION: Have the person sign before a notary public. Type below the signature line the name of the individual, and if signing on behalf of a company, the individual's position with the company and the name of the company. If filing an Insurance Premium Lien or Repairman's lien, the person signing on his own behalf or on behalf of a company must sign before a notary public.

FEES:

1. Filing Miscellaneous Lien Index ---------- $15.00
2. Non-Standard Filing/Termination ---------- $20.00
3. Additional attachments per typed page ---------- $ 1.00

From: Marsha Strecker <mstrecke@state.nd.us>
To: Todd Porter <TPorter@maas-nd.com>
Cc: DCook@state.nd.us <DCook@state.nd.us>
Date: Friday, January 12, 2001 3:46 PM
Subject: Child support enforcement concerns

In regard to the practice of arrears. Currently we now have the hearing then the judgement. This can take up to several months before the parties settle. The arrears then are retroactive to the time of the original notice of the case or at the request of the obligee. Now the obligor is in arrears at no fault of their own and it affects their life in several ways. 1) It is on their credit histroy. 2) It affects their ability to keep their everyday bills paid. Unless the obligor is in default or hasn't been paying support or if the child's well being is in jeopardy the change in support should only come after all parties have agreed and the judgement has been made. This would have to be done in a timely fashion to protect the child's interest. The current agency is less than efficient with the cases and the obligor is paying the price by being put under hardship.
The laws to collect the fair amount from the obligors needs to be calculated in several ways. One being a comparison of both parents income and adjusting accordingly. At the present time, the obligor is being punished in two ways. 1) They have limited visitation and recieve no compensation for the expenses they have while the child visits, clothes, shelter, fuel expense to get and return the child, social activities and programs they may be in, food,etc. 2) They have to pay all expenses for the child while they are away from them and even more. The allotment allowed for other children in the obligor's home does not even come close to the amount allowed for the child out of the home. If the obligee is financially secure (this is one of the requirements that the courts take into consideration when they award custody) but does not pay anything to care for the child because the obligor has to cover all expenses when the child is away and with them. This means the sole expense of raising the child falls squarely on one parent, not both as it was meant to be when the child was born and supported by both when they were together.
Another issue is that the obligee has legal representation without cost, whereas the obligor has no representation. At the very least they should represent both parties as a mediator in order to help all parties involved. At the present time it is one-sided, and the obligor has to pay all the way around. They are treated as if they are criminals and have done something wrong. It is hard enough to lose one's child. Why make the laws so unliveable. It is a yoke around their neck that weighs them and the family that they may have afterwards for years.
Please feel free to contact me and ask questions.. I would be willing to meet with you at your convenience. I have several friends that also would be willing to be a part of this. This is an unfair law and needs to be changed. Help us to change it before it affects someone you know.
Sincerely
Marsha Strecker

TESTIMONY BEFORE THE
SENATE HUMAN SERVICES COMMITTEE
REGARDING SENATE BILL 2160
JANUARY 17, 2001

Chairman Lee and members of the Senate Human Services Committee, my name is Barbara Siegel. I am the Policy Administrator with the Child Support Enforcement division within the Department of Human Services.

SB 2160 was introduced at the request of the department to provide amendments to child support laws. Some of the provisions would improve operations of the Child Support Enforcement program, some would ensure compliance with federal requirements, and others are technical in nature. The department has also prepared an amendment to the bill. The department's proposed amendment is attached to my testimony. I will identify the proposed amendment when discussing the relevant section.

A fiscal note has been filed due to provisions relating to exemption of fees.

Section 1: This section addresses two changes to N.D.C.C. § 14-08.1-05 and corrects a grammatical error contained therein. The first change is technical in nature to reflect that payment records are now maintained on the Fully Automated Child Support Enforcement System (FACSES).

The second change would remove time limitations associated with certain tools used to enforce judgments for unpaid child support. In 1999, this statute was amended to provide that unpaid child support judgments are not subject to statutes of limitations or to cancellation. We subsequently learned that removal of the statutes of limitations did not similarly remove time limitations associated with liens

on real property or executions. Therefore, despite removal of the statutes of limitations, effective enforcement of judgments for unpaid child support is still somewhat frustrated, particularly after a period of several years. The change sought to remove time limitations on liens or executions would logically complete the process which began in 1999 with the removal of the statutes of limitations, by permitting effective enforcement of those judgments despite the passage of time.

Section 2: This section expressly provides that child support which is owed to an obligee for the benefit of the obligee's child may not be seized, through legal process, by a creditor to satisfy a debt owed by the obligee. For example, if a custodial parent who receives or is entitled to receive child support owes a debt to a creditor, that creditor would not be able to obtain payment of the debt by seizing the child support through legal process such as garnishment. Although the custodial parent has a representational right to collect child support on behalf of the child and, accordingly, child support is paid to the custodial parent, the right to support really belongs to the child. Permitting a creditor to collect a debt from the custodial parent by seizing child support intended for the benefit of the custodial parent's child would effectively punish that child for a debt incurred by the custodial parent. With this new section, a judgment creditor of an obligee would not be able to collect a debt from that obligee by using legal process to seize child support owed to the obligee on behalf of the obligee's child. Of course, legal process may still be used to compel payment of the child support obligation from the child support obligor.

Section 3: With this section, we are seeking two changes to N.D.C.C. § 14-09-08.16. The first change would facilitate the establishment and the review of child support obligations. When regional child support offices must establish or review a child support obligation, they may, as appropriate, contact the noncustodial parent's income payor to obtain or verify information. As N.D.C.C. § 14-09-08.16(2)(b) is

currently written, the income payor is required to furnish information about the total amount of income paid to the noncustodial parent in the preceding six months. We are seeking to change this time period from six months to twelve months in order to obtain a more complete picture of the noncustodial parent's income. For example, income information for twelve months should indicate seasonal fluctuations that, depending on the timing of the request, might not be apparent if income information for only six months is provided. In addition, guidelines calculations begin with annual amounts.

The second change that we are seeking is technical in nature. The reference to "civil contempt" would be changed to "contempt of court" to be consistent with language in N.D.C.C. ch. 27-10 and elsewhere.

Section 4: With this section, we are seeking several changes to N.D.C.C. § 14-09-09.3. The first such change, to N.D.C.C. § 14-09-09.3(1), would ensure that state law is in compliance with federal requirements that a provision be made for the imposition of a fine against any employer who discharges, refuses to employ, or takes disciplinary action against a noncustodial parent on account of an income withholding order. The change would clarify that any employer who penalizes a noncustodial parent on account of an income withholding order may be punished by contempt of court, which may include the imposition of a fine.

The second change sought is technical in nature. It would change the reference from "civil contempt" to "contempt of court" to be consistent with language in N.D.C.C. ch. 27-10 and elsewhere.

The third change we are seeking, to N.D.C.C. § 14-09-09.3(5), would extend the time period for bringing a contempt proceeding against an income payor who fails to comply with an income withholding order. Under current law, such a contempt

proceeding must be commenced within 90 days. We are seeking to extend this time period to 180 days. There may be numerous reasons, other than deliberate disregard, for an income payor's failure to comply with an income withholding order. For example, the income payor may not fully understand his or her responsibilities. Extending the time period for commencing a contempt action against a noncompliant income payor would allow the regional child support offices to first contact the income payor on a formal or informal basis to provide some outreach and education. Using this approach, instead of proceeding directly to a contempt action, is employer-friendly and should benefit our partners in the employer community. Proceeding directly to a contempt action would still be an option when it appears that the income payor's noncompliance is due to deliberate disregard of the income withholding order.

The final change would clarify that the time period referred to above would only apply to contempt proceedings against the income payor so as not to inadvertently limit the noncustodial parent's right to bring some other type of legal action against the income payor. For example, a noncustodial parent wishing to bring a tort or contract action against the income payor would not be limited by the time period in N.D.C.C. § 14-09-09.3(5) but would instead have to comply with any other applicable statutes of limitations.

Section 5: This section would allow administrative writs of execution to omit an element. The Child Support Enforcement program may issue administrative writs of execution in certain cases. This authority is pursuant to state law (N.D.C.C. § 28-21-05.2). Administrative writs of execution are fashioned after judicially issued writs of execution except administrative writs of execution may, under current law, omit four elements including the seal of the court and the subscription of the clerk of that court. This amendment would omit a fifth element: the attestation in the name of the judge of the court that entered the judgment. We failed to request this

when the original legislation was considered, most likely because we misunderstood what was required with such an attestation. A law dictionary defines attestation as the "act of witnessing the actual execution of a paper and signing one's name as a witness to that fact." Because these are administratively issued, a requirement for an attestation in the name of a judge is inappropriate.

Sections 6 and 7: These sections would exempt the Child Support Enforcement program from fees charged by the registers of deeds and the secretary of state. Examples of such fees include fees for searching records, fees for filing documents in the central indexing system, and fees for copying. Generally, for other entities who obtain services from the registers of deeds and the secretary of state, the fees charged by these entities are passed on to the end customer. For example, an attorney may pursue a search of records of the secretary of state and in doing so is charged a fee. This fee is in turn passed on by the attorney to the attorney's client who ultimately pays the fee. The Child Support Enforcement program has no similar client to pay the fee and thus would bear the cost.

As a comparison to another entity with whom the Child Support Enforcement program interacts, the clerks of court do not charge the program any fees. N.D.C.C. § 27-05.2-03 states, "The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof." As a comparison to another entity with whom the secretary of state interacts, the state tax commissioner is not charged a fee for filing a lien with the secretary of state. N.D.C.C. § 57-38-49 states, "The [state tax] commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state."

In the spirit of interagency cooperation and in recognition of the importance of operating efficiently, the Child Support Enforcement program is working with the

Secretary of State's office and the Register of Deeds Association to make interactions between all entities involved as streamlined as possible.

There is a fiscal note attached to the amendments of these sections. Although exempting the Child Support Enforcement program from fees would result in a loss of revenue to the secretary of state and the county, the county loss of revenue is more than offset by the savings to the regional child support offices. Those offices would be paying the fees with 100% county funds. Essentially, this is a matter of one county entity paying another.

We understand from discussions with the Secretary of State's office that they do not oppose exempting the Child Support Enforcement program from their fees.

SECTION 8: These amendments would correct errors in two areas. The first amendment would correct erroneous cross references. The cross references should be to section 28-21-05.2 (regarding administrative writs of execution) and chapter 35-34 (regarding administrative liens). Without the amendments, the cross references are inappropriately to subsection 7 of section 23-02.1-19 (regarding death registrations) and to chapter 34-15 (regarding directory of new hires). These cross reference errors occurred when final amendments were made to HB 1226 in the 1997 legislative session, and references to other sections within the bill were not updated to reflect the changed section numbers.

The second amendment would correct an erroneous reference to "employer" in N.D.C.C. § 50-09-08.2(5). The reference should instead be to "employee" for accuracy and to ensure consistency with the federal law on which this provision is based.

Sections 9 and 10: Section 9, along with the attached proposed amendment, and Section 10 would apply the same review process for persons aggrieved by administrative child support liens as is available for persons aggrieved by other administrative actions, such as administrative orders for genetic testing and administrative subpoenas. Currently, provisions for review of actions relating to administrative child support liens (N.D.C.C. § 35-34-11) are very similar to provisions for review of other administrative actions (N.D.C.C. § 50-09-14) except the former is not as specific. For example, it does not specify the process if the child support order was issued in another state or the time period for filing the request for review. The change found in Section 9, along with the attached proposed amendment, and the repeal found in Section 10 have the effect of applying the same review process for persons aggrieved by administrative child support liens as for persons aggrieved by other administrative actions. The department's proposed amendment ensures the change made to N.D.C.C. § 50-09-14 in the bill as introduced is also made later in that same section of the law.

I would be happy to answer any questions you may have.

TESTIMONY BEFORE THE
HOUSE HUMAN SERVICES COMMITTEE
REGARDING ENGROSSED SENATE BILL 2160
March 12, 2001

Chairman Price and members of the House Human Services Committee, my name is Barbara Siegel. I am the Policy Administrator with the Child Support Enforcement division within the Department of Human Services.

SB 2160 was introduced at the request of the department to provide amendments to child support laws. Some of the provisions would improve operations of the Child Support Enforcement program, some would ensure compliance with federal requirements, and others are technical in nature.

A fiscal note has been filed due to provisions relating to exemption of fees.

Section 1: This section addresses two changes to N.D.C.C. § 14-08.1-05 and a housekeeping item contained therein. The first change is technical in nature to reflect that payment records are now maintained on the Fully Automated Child Support Enforcement System (FACSES).

The second change would remove time limitations associated with certain tools used to enforce judgments for unpaid child support. In 1999, this statute was amended to provide that unpaid child support judgments are not subject to statutes of limitations or to cancellation. We subsequently learned that removal of the statutes of limitations did not similarly remove time limitations associated with liens on real property or executions. Therefore, despite removal of the statutes of limitations, effective enforcement of judgments for unpaid child support is still somewhat frustrated, particularly after a period of several years. The change sought

County Association
In support of Legislation

to remove time limitations on liens or executions would logically complete the process which began in 1999 with the removal of the statutes of limitations, by permitting effective enforcement of those judgments despite the passage of time.

Section 2: This section expressly provides that child support which is owed to an obligee for the benefit of the obligee's child may not be seized, through legal process, by a creditor to satisfy a debt owed by the obligee. For example, if a custodial parent who receives or is entitled to receive child support owes a debt to a creditor, that creditor would not be able to obtain payment of the debt by seizing the child support through legal process such as garnishment. Although the custodial parent has a representational right to collect child support on behalf of the child and, accordingly, child support is paid to the custodial parent, the right to support really belongs to the child. Permitting a creditor to collect a debt from the custodial parent by seizing child support intended for the benefit of the custodial parent's child would effectively punish that child for a debt incurred by the custodial parent. With this new section, a judgment creditor of an obligee would not be able to collect a debt from that obligee by using legal process to seize child support owed to the obligee on behalf of the obligee's child. Of course, legal process may still be used to compel payment of the child support obligation from the child support obligor.

Section 3: With this section, we are seeking two changes to N.D.C.C. § 14-09-08.16. The first change would facilitate the establishment and the review of child support obligations. When regional child support offices must establish or review a child support obligation, they may, as appropriate, contact the noncustodial parent's income payor to obtain or verify information. As N.D.C.C. § 14-09-08.16(2)(b) is currently written, the income payor is required to furnish information about the total amount of income paid to the noncustodial parent in the preceding six months. We are seeking to change this time period from six months to twelve months in order

to obtain a more complete picture of the noncustodial parent's income. For example, income information for twelve months should indicate seasonal fluctuations that, depending on the timing of the request, might not be apparent if income information for only six months is provided. In addition, guidelines calculations begin with annual amounts.

The second change that we are seeking is technical in nature. The reference to "civil contempt" would be changed to "contempt of court" to be consistent with language in N.D.C.C. ch. 27-10 and elsewhere.

Section 4: With this section, we are seeking several changes to N.D.C.C. § 14-09-09.3. The first such change, to N.D.C.C. § 14-09-09.3(1), would ensure that state law is in compliance with federal requirements that a provision be made for the imposition of a fine against any employer who discharges, refuses to employ, or takes disciplinary action against a noncustodial parent on account of an income withholding order. The change would clarify that any employer who penalizes a noncustodial parent on account of an income withholding order may be punished by contempt of court, which may include the imposition of a fine.

The second change sought is technical in nature. It would change the reference from "civil contempt" to "contempt of court" to be consistent with language in N.D.C.C. ch. 27-10 and elsewhere.

The third change we are seeking, to N.D.C.C. § 14-09-09.3(5), would extend the time period for bringing a contempt proceeding against an income payor who fails to comply with an income withholding order. Under current law, such a contempt proceeding must be commenced within 90 days. We are seeking to extend this time period to 180 days. There may be numerous reasons, other than deliberate disregard, for an income payor's failure to comply with an income withholding order.

For example, the income payor may not fully understand his or her responsibilities. Extending the time period for commencing a contempt action against a noncompliant income payor would allow the regional child support offices to first contact the income payor on a formal or informal basis to provide some outreach and education. Using this approach, instead of proceeding directly to a contempt action, is employer-friendly and should benefit our partners in the employer community. Proceeding directly to a contempt action would still be an option when it appears that the income payor's noncompliance is due to deliberate disregard of the income withholding order. In addition, there are situations in which the current 90-day time period is simply not enough time. Some of these situations include those in which the employer has retained withheld income and has now left the state and those in which a North Dakota employer is noncompliant with an income withholding order from another state. If the time period for commencing a contempt action expires, the program can do nothing further. This result could be to the detriment of the noncustodial parent, custodial parent, and child.

The final change would clarify that the time period referred to above would only apply to contempt proceedings against the income payor so as not to inadvertently limit the noncustodial parent's right to bring some other type of legal action against the income payor. For example, a noncustodial parent wishing to bring a tort or contract action against the income payor would not be limited by the time period in N.D.C.C. § 14-09-09.3(5) but would instead have to comply with any other applicable statutes of limitations.

Section 5: This section would allow administrative writs of execution to omit an element. The Child Support Enforcement program may issue administrative writs of execution in certain cases. This authority is pursuant to state law (N.D.C.C. § 28-21-05.2). Administrative writs of execution are fashioned after judicially issued writs of execution except administrative writs of execution may, under current law,

omit four elements including the seal of the court and the subscription of the clerk of that court. This amendment would omit a fifth element: the attestation in the name of the judge of the court that entered the judgment. We failed to request this when the original legislation was considered, most likely because we misunderstood what was required with such an attestation. A law dictionary defines attestation as the "act of witnessing the actual execution of a paper and signing one's name as a witness to that fact." Because these are administratively issued, a requirement for an attestation in the name of a judge is inappropriate.

Sections 6 and 7: These sections would exempt the Child Support Enforcement program from fees charged by the registers of deeds and the secretary of state. Examples of such fees include fees for searching records, fees for filing documents in the central indexing system, and fees for copying. Generally, for other entities who obtain services from the registers of deeds and the secretary of state, the fees charged by these entities are passed on to the end customer. For example, an attorney may pursue a search of records of the secretary of state and in doing so is charged a fee. This fee is in turn passed on by the attorney to the attorney's client who ultimately pays the fee. The Child Support Enforcement program has no similar client to pay the fee and thus would bear the cost.

As a comparison to another entity with whom the Child Support Enforcement program interacts, the clerks of court do not charge the program any fees. N.D.C.C. § 27-05.2-03 states, "The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof." As a comparison to another entity with whom the secretary of state interacts, the state tax commissioner is not charged a fee for filing a lien with the secretary of state. N.D.C.C. § 57-38-49 states, "The [state tax] commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state."

In the spirit of interagency cooperation and in recognition of the importance of operating efficiently, the Child Support Enforcement program is working with the Secretary of State's office and the Register of Deeds Association to make interactions between all entities involved as streamlined as possible.

There is a fiscal note attached to the amendments of these sections. Although exempting the Child Support Enforcement program from fees would result in a loss of revenue to the secretary of state and the county, the county loss of revenue is more than offset by the savings to the regional child support offices. Those offices would be paying the fees with 100% county funds. Essentially, this is a matter of one county entity paying another.

We understand from discussions with the Secretary of State's office that they do not oppose exempting the Child Support Enforcement program from their fees.

SECTION 8: These amendments would correct errors in two areas. The first amendment would correct erroneous cross references. The cross references should be to section 28-21-05.2 (regarding administrative writs of execution) and chapter 35-34 (regarding administrative liens). Without the amendments, the cross references are inappropriately to subsection 7 of section 23-02.1-19 (regarding death registrations) and to chapter 34-15 (regarding directory of new hires). These cross reference errors occurred when final amendments were made to HB 1226 in the 1997 legislative session, and references to other sections within the bill were not updated to reflect the changed section numbers.

The second amendment would correct an erroneous reference to "employer" in N.D.C.C. § 50-09-08.2(5). The reference should instead be to "employee" for

accuracy and to ensure consistency with the federal law on which this provision is based.

Sections 9 and 10: Section 9 and Section 10 would apply the same review process for persons aggrieved by administrative child support liens as is available for persons aggrieved by other administrative actions, such as administrative orders for genetic testing and administrative subpoenas. Currently, provisions for review of actions relating to administrative child support liens (N.D.C.C. § 35-34-11) are very similar to provisions for review of other administrative actions (N.D.C.C. § 50-09-14) except the former is not as specific. For example, it does not specify the process if the child support order was issued in another state or the time period for filing the request for review. The change found in Section 9 and the repeal found in Section 10 have the effect of applying the same review process for persons aggrieved by administrative child support liens as for persons aggrieved by other administrative actions. The Senate amended Section 9 at the request of the Department of Human Services to ensure the change made to N.D.C.C. § 50-09-14 in the bill as introduced is also made later in that same section of the law.

I would be happy to try to answer any questions you may have.