

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2373

2001 SENATE JUDICIARY

SB 2373

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2373

Senate Judiciary Committee

☐ Conference Committee

Hearing Date February 12th, 2001

Tape Number	Side A	Side B	Meter #
1	x	x	39-end/0-33.8
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2373: A BILL FOR AN ACT TO AMEND AND REENACT SUBDIVISION A OF SUBSECTION 1 OF SECTION 14-09-09.7 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO GROSS INCOME UNDER CHILD SUPPORT GUIDELINES OF THE DEPARTMENT OF HUMAN SERVICES.

Senator Dever, representing district 32, asked by R-Kids and Senator Cook to support the bill. There should be limitation of a 2nd job on being calculated. Irregular overtime should not be considered.

Senator Nelson, how do you define a second job.

Senator Bercler, my income from my second job gets me more money in a weekend than my first job.

Senator Cook, district 34, intent of the bill is that a second income will not be included.

Senator Trenbeath, my concern is that we seem to be limiting it two a second job. What about those who work multiple jobs? Should we include this into the bill?

Page 2

Senate Judiciary Committee

Bill/Resolution Number *Click here to type Bill Number*

Hearing Date *Click here to type Hearing Date*

Senator Cook, that is a good suggestion.

Senator Watne, may this be redacted from taxes?

Senator Traynor, could the second job be with the same employer?

Senator Cook, I don't know if that is my intention.

Margaret Kottre, testifies in support of the bill. (testimony attached)

Dan Biesheuvel, testifies in support of the bill. (testimony attached)

Mark Hoffnar, from Beulah, testifies in support of the bill. (testimony attached)

Senator Watne, it bothers me that the children of the first marriage are neglected.

Senator Traynor, can you claim your children as dependents on your income tax?

Mark Hoffnar, yes.

Senator Bericer, you can work outside of your normal job. Is that overtime if your working for same employer?

Mark Hoffnar, yes.

Mark Feckner, testifies in support of the bill. (testimony attached)

Senator Bericer, you have your children five days a week.

Senator Watne, how can you be a noncustodial parent?

Senator Trenbeath, did you spend 35, 000 dollars in legal fees?

Mark Feckner, yes.

Paulet Overs, (testimony attached)

Senator Trenbeath, I find your arguments unconvincing, have you spoken with judges on this?

Paulet Overs, no.

Senator Trenbeath, it seems to me that we're trying to give judges more latitude on an individual basis, your opposed to that?

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Senate Judiciary Committee

Bill/Resolution Number *Click here to type Bill Number*

Hearing Date *Click here to type Hearing Date*

Paulet Overs, that is not necessarily a good thing.

Senator Nelson, topics on page 2 of your testimony. We're talking about a parent with two families, what about the children of the second family?

Paulete Overs, that is explained in the current law.

Senator Nelson, this person is taking on a second job. There are other circumstances. The second family might be getting less time from this parent.

Senator Watne, is the second family a natural or adopted child?

Paulete Overs, yes a family is both.

Senator Traynor, closed the hearing on SB 2373.

**SENATOR TRENBEATH MOTIONED TO AMEND THE BILL, SECONDED BY
SENATOR DEVER. VOTE INDICATED 5 YEAS, 1 NAY AND 1 ABSENT AND NOT
VOTING. SENATOR LYSON MOTIONED TO DO PASS AS AMENDED, SECONDED
BY SENATOR TRENBEATH. VOTE INDICATED 5 YEAS, 1 NAY AND 1 ABSENT
AND NOT VOTING. SENATOR DEVER VOLUNTEERED TO CARRY THE BILL.**

FISCAL NOTE
Requested by Legislative Council
03/28/2001

Bill/Resolution No.:

Amendment to: Engrossed
 SB 2373

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

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

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

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

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

This bill would allow income from overtime and bonuses to be exempt, in certain situations, from the determination of income under the child support guidelines. The effect of this bill is that additional child support cases would result in a court hearing which would require increased time spent on those cases by the Regional Child Support Enforcement Units (RCSEUs). It is anticipated the increased time would be insignificant at each RCSEU and therefore would be absorbed by the current staff and accordingly any fiscal impact to the counties would be minimal.

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

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

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

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

Name:	Brenda M. Weisz	Agency:	Dept. of Human Services
Phone Number:	701-328-2397	Date Prepared:	03/28/2001

FISCAL NOTE
 Requested by Legislative Council
 01/26/2001

Bill/Resolution No.: SB 2373

Amendment to:

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

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

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

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

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

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

Name:	Brenda M. Weisz	Agency:	Dept. of Human Services
Phone Number:	701-328-2397	Date Prepared:	02/06/2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2373

Page 1, line 7, remove "all", after "income" insert "derived", after "from" insert "all sources" and
replace remove "a" with a

Page 1, line 8, remove the first "second job", after the second "second" insert "or subsequent"
replace "job" with jobs or from irregular overtime from a primary job

Page 1, line 12, replace ^{the second} "a" with "employment ^{beyond} over and above a regular forty-hour workweek"

Page 1, line 13, remove "second job"

Re-number accordingly

Roll Call Vote #: 1

BILL/RESOLUTION NO. 2273

Committee

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken	Amud
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By

[illegible]

Total (Yes) 2 No 1

Absent

Floor Assignment

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

Date: 2/14

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2373

Senate Judiciary

Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded

By

[illegible]

Total (Yes)

No

Absent

Floor Assignment

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

REPORT OF STANDING COMMITTEE

SB 2373: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2373 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "all", after "income" insert "derived", and replace "a" with "all sources"

Page 1, line 8, remove the first "second job", after the second "second" insert "or subsequent jobs or from irregular overtime from a primary"

Page 1, line 12, replace the second "a" with "employment beyond a regular forty-hour workweek"

Page 1, line 13, remove "second job"

Renumber accordingly

2001 HOUSE HUMAN SERVICES

SB 2373

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2373

House Human Services Committee

☐ Conference Committee

Hearing Date March 12, 2001

Tape Number	Side A	Side B	Meter #
Tape 1		X	892 to end
Tape 2	X		0 to 2386
Tape 3	X		3875 to end
Tape 4		X	0 to 760
Committee Clerk Signature <i>Connie Easton</i>			

Minutes:

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

Vice Chairman Devlin: I will open the hearing on SB 2373.

Senator Dever: Introduced Bill (See written testimony.)

Rep. Weisz: How do you define, "if the deduction is not detrimental to the child"? I would think most people would assume that you're getting a smaller child support payment and that would be detrimental to the child, so how would you define that?

Senator Dever: I think that's why it is left to the judge to make that determination. There is an assumption that the child comes first in a divorce settlement. The assumption is that their lifestyle shouldn't change. Everybody knows that everybody is affected by divorce.

Rep. Weisz: This bill is very clear, it says " if the deduction is not detrimental to the child". So the judge has to read that language in determination. I guess I am just curious. The sponsors of the legislation - how would you make a statement that a smaller child support would not be considered detrimental to the child?

Vice Chairman Devlin: I think you will find people here today to say that sometimes that child support is \$1,000 a month and that \$800 would be detrimental. I think the point is that it is up to the judge to decide. Some of the parents you are going to hear from have a second family and the first family gets all the child support and the second family gets left out in the cold.

Susan Beehler: Lobbyist for R-Kids. I guess I could answer that question to some degree. As far as a detriment, if a child is in a household where the household is a two income household and the father is already paying \$1100 a month and two parents are working and there is income coming into the home, I don't think it would be a detriment to that child to not have another \$100 increase in their child support if the income level is sufficient in that home. Nowadays many divorced couples after they get divorced, one of the parents will move in with somebody and have access to the income coming into that home even if they are not married. So the judge would be able to weed all that out. In looking at it in the household they are living in and the circumstances they are living in. Perhaps they are living in a better life style than if they would have stayed with the original partner. We urge you to pass SB 2373. This bill is more equity for our children.

Rep. Weisz: Wouldn't the changes in SB 2160 address the problem you just brought up?

Susan Beehler: If that is how the agency would look at it, we would be supportive of it. That is now how the agency works. We have all been through modifications, we know how the agency works. It needs to be in law - what they need to do.

Vice Chairman Devlin: This bill the way I read it, you will have to go to court every time because the only one that can make the determination is the judge.

Susan Beehler: Well, yes that is possibly true but if it is a large amount, you can still have that choice. The department still has that choice. If we are talking a bonus that happens once every 10 years and it is \$5,000, well \$5,000 would mean \$400 a month more income every year. So you are looking at probably \$120 more in child support. This gives the opportunity for the choice to be there. Basically, there is no exception under the guidelines.

Margaret Kottre: Lobbyist for R-Kids. We are in support of this bill. (See written testimony.)

Daniel Biesheuriel: Lobbyist for R-Kids. I am in support of this bill. (See written testimony.)

Mark Hafner: Non-custodial Parent. In support of this bill. (See written testimony.)

Rep. Weisz: Do you really think based on the testimony you have that if the court was willing to allow income higher than you were actually making, would you think that same court would look favorably on disallowing that completely under this law? It would still be up to the judges discretion. If you follow that, but this bill is still leaving it in the hands of the exact same judge. What is going to change?

Mark Hafner: One of the problems with the system is now I can't go in there and say that I am going to make \$51,000. He has to base it on the figure given to him by child support guidelines. He asked for the figures from the lawyer from child support services and she did her best as to figure how much I was going to make. However, I provided evidence to the contrary. The judge can take into account her income.

Rep. Galvin: How do they figure your former spouses and her husbands income into this?

Mark Hafner: Up to two years ago my spouses income, my wife now, was figured into my child support. That is no longer in effect. Her income is not figured into this system at all.

Rep. Weiler: I want to clarify this in my own mind. You said that your current wife, the money she makes now is not figured into what you make? Do you want it figured in?

Mark Hafner: At the time it was figured in the guidelines had that in effect - that her salary was figured in. I have always wondered why my current wife's income is figured in and my ex-wife's income wasn't.

Rep. Weiler: You don't want your wife's income figure into it, but your ex-wife's husbands income is figured into it and that is okay?

Mark Hafner: We don't want.....

Rep. Weiler: As part of your testimony you said he was making \$60,000 a year and.....

Mark Hafner: All we want to be able to do is to show the judge that this is not going to be detrimental to the effect of my children. That is the reason I bring that up. If he's making that much and she's making this much, it is not figured into the system and I don't think it should be but it should be taken into account. That is all I am asking for.

Margaret Kottre: I would like to address Rep. Weisz's question on how we can go back to the judges after.....Mark kinda hit on it. In many cases once the child support amount is set, we can't afford to hire a lawyer and go to court and give them the paperwork and say this is all wrong. The judge signs it based on what they were given by the department. In this scenario they based the child support on what the department gave them. In many cases we agree with this because hiring a lawyer hurts the children at home.

Todd Schock: Non-custodial Parent. I have seen first hand as the divorced father of three children how this bill has affected me in the last 18 years. The last four years I have assumed a salaried position at the plant so the overtime issue doesn't affect me. Overtime is not a guarantee. There is a lot of overtime used to figure support. The overtime comes and goes. This

bill isn't ideal, but it would go a long ways to help out. I strongly recommend that we can pass SB 2373 - a second income and overtime should not be penalized.

Vice Chairman Devlin: Further testimony in support. Seeing none, is there testimony in opposition?

Lloyd Suhr: Attorney, N.D. Child Support Enforcement. In opposition to this bill. (See written testimony.)

Rep. Pollert: In your testimony you are saying that this obligor No. 1 would have an advantage, yet the way I would read the bill, it says that the primary obligor may be deducted from the gross income if it is detrimental to the child. Maybe instead of us arguing all the time about child support, maybe you could help us clarify this law so we could make it readable.

Lloyd Suhr: Because I disagree with the substantive intent of this law, I would say that any clarification that still advances that same substantive intent should not be recommended passed. When you clearly define the terms used in the bill or not, the intent of this bill is to exclude income that right now is considered. You can clarify that all you want to and overall purpose is objectionable.

Rep. Pollert: Then instead of putting may, we should put shall. On line 9.

Lloyd Suhr: I think that again makes the problem that much worse. If we are talking about the discretion in the courts, changing anything from may to shall takes away any discretion this bill may have been intended to provide. Which again, if one of the purposes of the bill was to give judicial discretion changing that word would actually have the opposite affect.

Vice Chairman Devlin: How do you get around the earning capacity argument with the energy field, with the examples we had today, where the overtime was not something they could count

on. But was force on them by their employers. How can you determine earning capacity when it is something they have no control over?

Lloyd Suhr: N.D. Law presently, when a review is done on a child support obligation, it doesn't require that they only look at the last year of income. What the statute says, is you can base a modification of a child support obligation on the income deriving from any tax year ending no more than 17 months before the proceeding of the court. If I am bringing a proceeding today, I can go into any tax year that ended no more than 17 months today - 2000 or 1999. So if you have an individual who had a huge rush of overtime in the year 2000 that they didn't have in the year 1999. Both of those years can be considered before the court. It is not just one year you are looking at. You don't look at the income of a custodial parent and their new family, you look at what should the non-custodial parent be paying based on their ability to pay. I see foster care cases all the time where the state expends \$50,000-\$60,000 in foster care and when we establish the child support obligation I have seen where we give back 5%, 10% of the foster care expended because that is the person's ability to pay, that is the capacity. It can work both ways. Ultimately the term earning capacity is something that the court can look at a variety of information to consider.

Rep. Metcalf: You were talking about going 17 months back and look at more years. If this review is conducted in September of a year, how many years will they be taking a look at?

Lloyd Suhr: Again, if you are talking about someone who is an employee, you could go back and look at the 2001 income accrued so far - you could look at the 2000 income and depending on when the motion is brought before the court you could potentially look at the 1999 income.

Rep. Metcalf: When you talk about the ability to earn, where's the definition for that? There are a lot of definitions here that could still be the judges decision. So to me, detrimental in here

means no more than the ability to earn. It has to be a decision of the judge. These things are up in the air. There is no satisfactory answer to either side in this question. Maybe this bill could be tightened up a little bit, but to base in on certain of your criteria is not correct.

Lloyd Suhr: Again when you are talking about earning capacity - unfortunately, what we primarily have to look to is the person's earnings history. Certainly everyone in this room could come up with a dozen different things that they think are relevant to determining what a person's earning capacity is. That may be defined on more of a subjective basis than anything else. Certainly their last couple of income tax returns are relevant. As are their present circumstances. I am not quite following your connection to the issue of ability to earn as it relates to detrimental. What I think the use of the term detrimental here is intended to do, is something very similar to what you would see in a visitation situation.

Rep. Metcalf: I was not trying to pick on the word detrimental. All these terms are subjective and decisions have to be made.

Rep. Weisz: If the obligee is not receiving any state assistance, why is the state representing the obligee in any type of modification of a child support order? What is the state's interest in the state offering assistance to the plaintiff and not the defendant?

Lloyd Suhr: The child support attorney does not represent the plaintiff in a child support action. There is a specific statute on this point. I believe 14-09.09.27, which says there is no attorney/client relationship between any party to a child support enforcement proceedings. Our client - is the State of North Dakota seeing that the proper amount of child support is being paid under the guidelines?

Rep. Weisz: I might disagree. We have a motion here where it says the plaintiff is represented by Rhonda Pierce who is an attorney for the Child Support Enforcement Agency in a court

document. Can you explain why she would be appearing in defense of the plaintiff, when the obligee is out of state and not being supported by the State of North Dakota?

Lloyd Suhr: I don't know the exact cases you are referring to, but No. 1, it is entirely possible that at an earlier point there was public assistance expended and the State of North Dakota was a party through that expenditure. If there was no public assistance and the court still made a reference that the plaintiff was being represented by that attorney, that would be a mis-characterization. It is a common one. At these child support proceedings we ask many questions you would think an attorney representing the custodial parent would ask. We push the hearing in a way that you would look at it and say, are they representing or not. Each individual person who opens a file with our office signs an acknowledgment of non representation form. Which literally says I understand you don't represent me. I understand that I can hire my own attorney. Again, by virtue of the statutory authority, that lack of attorney/client relationship is clarified.

Vice Chairman Devlin: Further testimony in opposition?

Paulette Oberst: Asst. Policy Administrator, Child Support Enforcement Division, Department of Human Services. The department is not opposing SB 2373. We are neutral, but I am here to express some great concerns we have. (See written testimony.)

Rep. Klein: On your 2nd page towards the bottom, it says that if this bill passes, children from the "new" family would benefit from the obligor's working a second job or overtime, but the children for whom support is owed would not benefit. Actually, it is the other way around. Maybe financially, but the person working is not going to be able to see him. People on the other side are going to get more money. That's not going to change, but the benefit to the immediate family is going to change.

Paulette Oberst: The financial - the children from the obligor's family would get the financial benefits from the obligor getting a second job or the overtime. The children from the support side would not see that financial benefit. It is quite true that the obligor who works overtime and works a second job does not have as much time to spend with the kids, but this still.....the proponents of this bill are not saying "we won't work that second job or we don't work overtime". They are saying that when you do work second jobs and you do work overtime, we want the court to be able to not count that income. So that wouldn't really solve that problem of not being able to spend time with their children.

Rep. Tieman: Looking on page 2 - the first whole paragraph on the page you say "even though the income from a second job or overtime is included in gross income, only a portion of that income is actually paid out in child support". What do you mean by that?

Paulette Oberst: What I mean by that is that child support, all child support, does not consume the obligors entire income - it is just a portion. Somebody, for example, who has a net income of \$1,000 per month pays \$250 a month, which is 25% of that person's income. Basically, it is the same for overtime or an extra job. It would count as income, but certainly would not be all paid out as child support.

Vice Chairman Devlin: Further questions? Any further testimony in opposition? I will close the hearing on SB 2373.

COMMITTEE WORK:

CHAIRMAN PRICE: Let's go to SB 2373 for this morning.

VICE CHAIRMAN DEVLIN: It is maybe fixable, but I don't know if we have enough time to do it. It did boil down to the judge's discretion. There was some serious objection that they lowered the standards from not in the best interest of the child to not detrimental to the child.

REP. WEILER: I just had a comment. The main thing about this is that it does give the judge discretion.

REP. PORTER: I would think that in the scenario that was given, that the judge would think that it is detrimental to the child's best interest. The second job is producing a lot more money than the first job. I am in total support of the bill.

REP. KLEIN: One aspect of the bill that I don't like is the fact that if we don't pass it, it destroys their - why would the person want to go out and get the second job. It takes away the incentive to do that. You're losing out the companionship with the second family because you have the second job.

REP. CLEARY: The way I see it I think the judge would, if that person had a job for 12 hours, and then another job, that he would put those two together. Doesn't it have to come up to at least 40 hours a week that they consider? I think 40 hours a week is the fair thing, and what he does beyond that some needs to go to the second family. There has to be some balance.

REP. WEISZ: Child support doesn't go to the family, it goes to the children and the children are his responsibility. The children have already lost one of their parents and so the argument is that they now want to start a new life, they don't want to change their obligation to their first set of children, because now I want all of my additional money to go to my second set of children is a fallacy. They have a responsibility to their kids regardless of what they do after that point. That the first kids shouldn't take part of the extra money is wrong. The second point that this whole thing is predicated in a sense with testimony we heard was a high income individual. I think

you're going to find it very hard for any judge to rule that any increased income that that obligor makes that a percentage of it go to the child. Any obligor that says he won't take a second job tells you what they think of their children. We have to look at the whole picture.

VICE CHAIRMAN DEVLIN: They can do that right now. They can petition the judge, the judge can look at the income to see if that is going to be maintained - if it isn't going to be there next year, he can use his discretion to do that right now. The multiple family deal was built into the guidelines after '95. It is suppose to take into affect that you have more than one family.

REP. PORTER: If that was the case, I would totally agree with not needing this piece of legislation. Scenario's that Rep. Weisz and Rep. Devlin aren't the case out in the real world.

REP. SANDVIG: One of the problems we were finding in the interim three years ago was with the judges. Their decisions were not always biased towards the non-custodial parent. I know there are problems in the system, but I do think Rep. Weisz and Rep. Devlin are right on this one. This bill is not the way to solve this problem. If you've had children, you've got to take the responsibility for them. Getting married and starting another family is not the way to take responsibility.

REP. GALVIN: The person that doesn't have the children probably lives in an almost poverty situation and the other parent that not only has the children, but that family probably lives in luxury. I think those are the situations these people are trying to take care of.

REP. DOSCH: I think part of their hope on this bill is that, say they have X's out there that as soon as they smell their X's are getting some overtime or whatever, they are in the courts right away wanting to get some extra money.

REP. WEILER: There are also those situations that are out there where the non-custodial parent doesn't make a lot of money. The custodial parent with a child or two - the amount of money

3-13-01

they get for child support each month is an absolute joke. When the non-custodial parent goes out and gets a second job, I believe they should be obligated to give some more. The only situations aren't ones with higher income. I think the majority would be lower income.

VICE CHAIRMAN DEVLIN: The other issue with this bill - if you have a person making \$22,000 in one job and somebody making \$22,000 a year at three jobs, you should treat the children equally because the child support is based on the \$22,000. What you would be doing under this bill - they're both making about \$22,000 - but you're going to throw out about half of one of them because you're going to base his on \$10,000 even though he is making \$22,000. That isn't fair - that doesn't treat the children equally. That is what the child support guidelines are supposed to do.

REP. WEISZ: Again, the court has jurisdiction. The judge has discretion now that if you have a one time deal, he can take a look at that and make adjustments. They do it. This isn't going to be an issue when we're talking about a higher income - this is low income. If you're making a \$100,000 a year, you're going to make a hard case that you can't support your family plus paying child support. The reality is they will be low paying income people.

REP. METCALF: On lines 8, 9, and 10 - maybe we need to do some changing there. Maybe we should take out that second and subsequent job and just based it on irregular overtime. I realize this can go both ways, because it depends on what year the child support was looked at.

CHAIRMAN PRICE: How many are interested in trying to fix the bill? Raise your hand

Rep. Metcalf, do you want to find one or two people who will work with you on that?

REP. METCALF: Yes.

CHAIRMAN PRICE: Let's try and get it out yet this week.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2373 B

House Human Services Committee

☐ Conference Committee

Hearing Date March 14, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		3300 to 4280
Committee Clerk Signature <i>Cornie Easton</i>			

Minutes:

COMMITTEE WORK:

CHAIRMAN PRICE: Let's go to SB 2373. (Read proposed amendment.)

REP. METCALF: I move passage of the amendment.

REP. WEILER: Second.

CHAIRMAN PRICE: We have a motion. Discussion?

REP. METCALF: I had discussion with Senator Cook about this bill. What has been said by Rep. Devlin on shares income - what has been done in 1999. I feel very comfortable with this. It does not give discretion. It is a positive action.

VICE CHAIRMAN DEVLIN: Sherry Mills Moore had some real problems with the original bill. She felt it would increase litigation. I agree with her. I have a problem that we're treating children differently. I don't care how many jobs or bonuses anybody has, the children should be

treated the same. I don't think they would be under this. I think you'll have people circumventing the law to get paid in other ways to avoid overtime showing up.

REP. WEISZ: All they are really saying here is that if you get a one shop deal, you cannot use it to determine your future child support level. But it has to be concerned in figuring out what the child support should have been for that period of time when you received it.

REP. METCALF: Rep. Porter looked at this and he felt it would correct the situation he discussed yesterday.

CHAIRMAN PRICE: Other comments? On the amendment all those in favor signify by saying Aye (13 Yes, 0 No, 1 Absent.) We have an amended bill.

REP. TIEMAN: I motion Do Pass as amended.

REP. CLEARY: Second.

CHAIRMAN PRICE: Discussion? Hopefully, the courts are going to use some common sense on this one.

REP. WEILER: I think that whatever you do that some people are going to try and get around it. I think this clears it up - certainly is better than the original bill was.

CHAIRMAN PRICE: The clerk will read the roll on a **DO PASS as amended.**

11 YES 1 NO 2 ABSENT CARRIED BY REP. TIEMAN

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2373 C

House Human Services Committee

☐ Conference Committee

Hearing Date March 26, 2001

Tape Number	Side A	Side B	Meter #
Tape 1		X	0 to 2070
Committee Clerk Signature <i>Cornie Easton</i>			

Minutes:

COMMITTEE WORK:

CHAIRMAN PRICE: SB 2373.

REP. WEISZ: There was a small problem that the department had. We basically added a new section to the guidelines (discussed changes.)

CHAIRMAN PRICE: (More discussion.)

REP. WEISZ: This is an improvement over doing nothing.

BLAINE NORDWALL: Department of Human Services. (Discussed guidelines.)

CHAIRMAN PRICE: The first decision is do you want to reconsider your actions on SB 2372?

REP. WEISZ: Move to reconsider.

REP. POLLERT: Second.

CHAIRMAN PRICE: All those in favor signify by saying Aye (All). We have a bill in front of us, what do you want to do?

Page 2

House Human Services Committee

Bill/Resolution Number SB 2373

Hearing Date March 26, 2001

REP. PORTER: I would move the amendments that put the effective date either August 1, 2003 or when the department certifies the new guidelines.

REP. WEISZ: Second.

CHAIRMAN PRICE: Further comments? If not, all those in favor signify by saying Aye (13 Yes, 1 No, 0 Absent). We have an amended bill, what are your wishes?

REP. PORTER: I would move a Do Pass as amended.

REP. METCALF: Second.

CHAIRMAN PRICE: Any comments?

REP. WEILER: So what this says is that the overtime wages and irregular bonuses are not going to count for future years.

CHAIRMAN PRICE: It really just gives more weight to the consideration of the judge, then being irregular.

REP. CLEARY: Wouldn't it better to just wait in the 2003 Session?

CHAIRMAN PRICE: The only thing is that the department would have to consider this as one of the guidelines.

REP. WEISZ: This will pretty well spell out that the department has to take a pretty serious look at this when they review the guidelines.

VICE CHAIRMAN DEVLIN: This seems to me this is just another case where we are trying to do the judge's job for him. I think it is clearly in statute that they can look at all of this right now.

CHAIRMAN PRICE: The clerk will call the roll on a **DO PASS as amended.**

10 YES 4 NO 0 ABSENT CARRIED BY REP. PORTER

VR
3/14/01

HOUSE AMENDMENTS TO SB 2373

HOUSE HS

3-16-01

Page 1, line 8, remove "a second or subsequent jobs or from"

Page 1, line 9, replace "from a primary job may be deducted from gross income if the" with
"and bonuses must be deducted from gross income; however, income from irregular
overtime and bonuses must be considered for the payment of arrearages"

Page 1, remove lines 10 through 13

Page 1, line 14, remove "beyond a regular forty-hour workweek"

Renumber accordingly

Date: ~~3-12-01~~ 3-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2373

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Moved DO PASS Amendment

Motion Made By Rep. Metcalf Seconded By Rep. Weiler

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) 13 No 0

Absent 1

Floor Assignment _____

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

Date: 3-14-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2373

House Human Services Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS as amended

Motion Made By Rep. Tieman Seconded By Rep. Cleary

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) 11 No 1

Absent 2

Floor Assignment Rep. Tieman

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

REPORT OF STANDING COMMITTEE

SB 2373, as engrossed and amended: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2373, as amended, was placed on the Sixth order on the calendar.

Page 1, line 8, remove "a second or subsequent jobs or from"

Page 1, line 9, replace "from a primary job may be deducted from gross income if the" with "and bonuses must be deducted from gross income; however, income from irregular overtime and bonuses must be considered for the payment of arrearages"

Page 1, remove lines 10 through 13

Page 1, line 14, remove "beyond a regular forty-hour workweek"

Renumber accordingly

Date: 3-26-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2373

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Move to reconsider, over action

Motion Made By Wayne Seconded By Pollert

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VK
3/26/01

HOUSE AMENDMENTS TO SB 2373

HOUSE HS

3-27-01

In lieu of the amendments adopted by the House as printed on page 964 of the House Journal, Senate Bill No. 2373 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subdivision to subsection 1 of section 14-09-09.7 of the North Dakota Century Code, relating to income determination for child support; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 14-09-09.7 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Authorize a rebuttal of the presumption provided in subsection 3 in cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.

SECTION 2. EFFECTIVE DATE. This Act is effective on the earlier of August 1, 2003, or the date the department of human services certifies to the legislative council as the effective date of guidelines adopted which implement section 1 of this Act, as provided by subsection 4 of section 14-09-09.7."

Renumber accordingly

Date: 3-26-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2373

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken

Move amendments out effective Aug 1st (listen to
for Page)

Motion Made By

Porter

Seconded

By

Wasy

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3-24-01
Roll Call Vote #: 3

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2373

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Move DO PASS as amended

Motion Made By Rep. Porter Seconded By Rep. Metcalf

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

Total (Yes) 10 No 4

Absent _____

Floor Assignment Rep. Porter

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

REPORT OF STANDING COMMITTEE

SB 2373, as engrossed and amended: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2373, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on page 964 of the House Journal, Senate Bill No. 2373 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subdivision to subsection 1 of section 14-09-09.7 of the North Dakota Century Code, relating to income determination for child support; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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Authorize a rebuttal of the presumption provided in subsection 3 in cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.

SECTION 2. EFFECTIVE DATE. This Act is effective on the earlier of August 1, 2003, or the date the department of human services certifies to the legislative council as the effective date of guidelines adopted which implement section 1 of this Act, as provided by subsection 4 of section 14-09-09.7."

Renumber accordingly

2001 TESTIMONY

SB 2373



"Mark Hafner"
<mdhafner@westriv.com>

02/12/2001 11:01 PM

To: "Senator Tom Trenbeath" <ttrenbea@state.nd.us>, "Senator Stanley W Lyson" <slyson@state.nd.us>, "Senator Carolyn Nelson" <cnelson@state.nd.us>, "Senator Darlene Watne" <dwatne@state.nd.us>, "Senator Dennis Bercier" <dbercier@state.nd.us>, "Senator Dick Dever" <ddever@state.nd.us>, "Senator John T Traynor" <jlraynor@state.nd.us>

cc:

Subject: SB2373 From Mark Hafner

Members of the Senate Judiciary Committee

Thank you for listening to my testimony on bill 2373. As I mentioned I am sorry that I did not have a written testimony to go along with the other material I had with me. I will therefore try to hit on some of the main parts of my testimony along with following up some of the questions that were asked.

I am the non-custodial parent of 2 girls, Kara 15 and Deanna 13, who reside with their mother in Tehachapi California, were they moved to shortly after our divorce was final. As I mentioned we did not go through the court system or the Child Support Guidelines and agreed to everything by ourselves. This included the facts that I would allow her to take the children out of state, pay for all expenses to get them back to ND, pay for medical ins, and provide life ins policies on both of them as well as myself. In return I would pay \$600. in child support. By the guidelines I should have been paying \$780, but we took into account the other expenses and set it at this amount.

In May of 1998 I was notified of her request for a review on my support. This was 2 months before the birth of my son Josten who is now 2 1/2 and 2 years after my wife and I built our new house. This was defiantly done on purpose! When we went to court I testified that I was guaranteed to make \$51000 but with the overtime the way it was I would make \$55000. The Lawyer for the child support unit then said and I quote "is not this \$55000 figure just a estimate and not an actual number" and then proceeded to estimate my income for 1998 at \$57850. Have presented info to you that shows I did make \$55000 for 2 years. Who's numbers are estimates. I am now paying \$991 and still provide all the other requirements set forth, even though the judge granted be a downward deviation of \$1200 on my Child support. This deviation was wrongly taken of my net income and therefore I received a deviation of about \$20 a month. I hope you read that part of the judges order and realize what the child support people did on this matter.

My main point therefore is that if I am guaranteed to make so much money and overtime is not guaranteed, what therefore is wrong with giving a judge the chance of setting my support based on a factual number.

I also included in my materials copies of my request for a review and the answer to it. If I were to have a second job and or overtime and my support was based on those figures and I lost both of those ways of making money, I would have to higher a lawyer and go to court to get my support dropped to were it should be. This would cost lots of money and delay the whole process to the point that I would be in arrears and would be called a deadbeat dad even though in the last 10 years I have never missed a payment.

During this hearing many questions were asked concerning how second families and their children were handled in the guidelines. According to the representative from Th dept. of human sources, they are handled as equally as the first family. This is and I hope I showed you an outright lie. I enclosed in my material a copy of my guidelines used and I will show you were the problems are.

Line 4 and 5 - Why is it that my second family is only worth an average of the 3 children. My first child is worth 25% of my income but my oldest child is worth way less. Both sets of children should be applied to the guidelines equally.

Line 9- I didn't even get a deduction of the full amount of the first set of numbers.

lines 3 4 & 5 Page 2 of multiple families- When support is finally calculated for my first family the amount from my second family is again cut in half.

Hopefully this showed you some of the problem and the fact that my new children are not treated as equals but far from it.

I will be glad to answer any Questions you may further have and again urge you to amend this motion and place a do pass recommendation on bill SB2373.

Thank you,
Mark Hafner
873-2331
mdhafner@westriv.com



**NORTH DAKOTA DEPARTMENT
OF HUMAN SERVICES**

John Hoeven, Governor
Carol K. Olson, Executive Director

Child Support Enforcement

1929 N Washington St, PO Box 7190, Bismarck, ND 58507-7190
(701) 328-3582
ND Toll Free 1-800-755-8530
Fax (701) 328-6575

February 13, 2001

The Honorable Darlene Watne
State Senate
State Capitol
600 E. Boulevard
Bismarck, ND 58505

Dear Senator Watne:

On February 12, 2001, during the Senate Judiciary Committee hearing regarding SB 2373 (income from second jobs), you asked for some information relating to principles underlying the child support guidelines. In response to your request, we have prepared and enclosed a short outline highlighting key features of the guidelines, including a list of the objectives which the federal government sought to attain by mandating the development and use of such guidelines.

In addition to the outline, we have also enclosed the following materials:

- North Dakota's current child support guidelines which have been effective since August 1, 1999. The schedule showing child support amounts based on the number of children and the obligor's monthly net income begins on page 14.
- Worksheet and supporting schedules developed by Child Support Enforcement to facilitate guidelines calculations
- A case scenario involving the application of the "multiple family" provisions of the guidelines
- Excerpts from a forthcoming study conducted by Indiana University showing comparisons of child support amounts determined in accordance with various state guidelines

I hope this information is helpful. If you have any questions or require further information, please feel free to contact me at your convenience.

Thank you for your time.

Sincerely,
Paulette Oberst

Paulette Oberst
Assistant Policy Administrator

ENCLOSURES

CHILD SUPPORT GUIDELINES

Laws and regulations

Federal law (42 USC 667) and federal regulation (45 CFR 302.56) require that states establish child support guidelines. The federal regulation sets forth minimum specifications for those guidelines, including that the guidelines take into consideration all earnings and income of the noncustodial parent. It is further required that the amount resulting from application of the guidelines is presumed to be the correct amount of child support. The presumption may be rebutted using specific criteria. These criteria must take into consideration the best interests of the child. It is required that the child support guidelines be reviewed at least every four years. (North Dakota's next review will take place in 2002.)

Under state law (NDCC 14-09-09.7), the Department of Human Services establishes child support guidelines through administrative rules. The law specifies some of the issues that the guidelines must consider.

Background summary

Prior to 1984, use of child support guidelines was limited. In the vast majority of states, including North Dakota, child support orders were set on a case by case basis, in accordance with broad principles of family law and judicial attempts to analyze parental resources and children's needs in each specific situation.

The Child Support Enforcement Amendments of 1984 required that states establish numeric guidelines to determine appropriate amounts of child support. These guidelines were to be made available to officials charged with setting the levels of child support awards (in North Dakota, that is the courts), however the statute specified that the guidelines "need not be binding."

- In response, North Dakota issued "Guidelines for Absent Parents" with "Table of Suggested Minimum Contributions" (1984, amended 1988)

The Family Support Act of 1988 mandated that states implement presumptive, rather than advisory, child support guidelines. In mandating adoption and use of presumptive guidelines, the federal government had three broad objectives:

- (1) To enhance the adequacy of orders for child support by making them more consistent with economic evidence on the costs of child rearing;
- (2) To improve the equity of orders by assuring more comparable treatment for cases with similar circumstances; and
- (3) To improve the efficiency of adjudicating child support orders by encouraging voluntary settlements and reducing the hearing time required to resolve contested cases.

(Source: "Child Support Guidelines: The next generation" published by the U.S. Department of Health and Human Services in April, 1994)

- In response, North Dakota issued "Child Support Guidelines" N. D. Admin. Code ch. 75-02-04.1 (1991, amended 1995, amended 1999)

Some highlights of the 1995 amendments:

- addressed "multiple family" situations, thus recognizing the cost of supporting a child living with the obligor
- provided a means for imputing income based on earning capacity
- addressed treatment of "children's benefits"

Some highlights of the 1999 amendments:

- excluded certain employee benefits and child support payments received from the definition of gross income
- revised the process for determining net income from self-employment
- provided an adjustment for extended visitation

Deviation criteria

Each state must establish criteria under which application of the guidelines might be unjust or inappropriate; thus, the guidelines must have a list of specific deviation criteria. These deviation criteria must take into consideration the best interests of the child. Some states cite only a small number of criteria. In contrast, some states have a rather lengthy list of specific deviation criteria. If the list gets too long, however, it can obviously undermine the presumptiveness of the guidelines. If judges and hearing officers are deviating from the guidelines more often than they are applying them, the effectiveness of the guidelines is greatly diminished. In North Dakota, the list began in 1991 with 8 criteria; the list has grown to currently include 12 criteria.

Attachments

Child Support Guidelines N. D. Admin. Code ch. 75-02-04.1

Guidelines worksheet and schedules

Excerpts from a study (as yet unpublished) conducted by Indiana University showing comparisons of North Dakota child support amounts with child support amounts of other states

Sample case scenario involving a multiple family situation

Prepared by:

Child Support Enforcement Division, Department of Human Services

February 13, 2001

**CHAPTER 75-02-04.1
CHILD SUPPORT GUIDELINES**

Section	
75-02-04.1-01	Definitions
75-02-04.1-02	Determination of Support Amount - General Instructions
75-02-04.1-03	Determination of Support Amount - Split Custody
75-02-04.1-04	Minimum Support Level
75-02-04.1-05	Determination of Net Income From Self-Employment
75-02-04.1-06	Determining the Cost of Supporting a Child Living With the Obligor
75-02-04.1-06.1	Determination of Support Amount in Multiple-family Cases
75-02-04.1-07	Imputing Income Based on Earning Capacity
75-02-04.1-08	Income of Spouse
75-02-04.1-08.1	Adjustment for Extended Visitation
75-02-04.1-09	Criteria for Rebuttal of Guideline Amount
75-02-04.1-10	Child Support Amount
75-02-04.1-11	Parental Responsibility for Children in Foster Care or Guardianship Care
75-02-04.1-12	Uncontested Proceedings
75-02-04.1-13	Application

75-02-04.1-01. Definitions.

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.
2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.
3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from means tested public assistance programs.
4. "Custodial parent" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of custody descriptions such as "shared" or "joint" custody given in relevant judgments, decrees, or orders.

5. a. "Gross income" means income from any source, in any form, but does not mean:
- (1) Benefits received from means tested public assistance programs such as temporary assistance to needy families, supplemental security income, and food stamps;
 - (2) Employee benefits over which the employee does not have significant influence or control over the nature or amount unless:
 - (a) That benefit may be liquidated; and
 - (b) Liquidation of that benefit does not result in the employee incurring an income tax penalty; or
 - (3) Child support payments.
- b. Examples of gross income include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent they annually exceed one thousand dollars in value, spousal support payments received, earned income tax credits, value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.
- c. For purposes of this subsection, income tax due or paid is not an income tax penalty.
6. "In-kind income" means the receipt of any valuable right, property or property interest, other than money or money's worth, including forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property or services at no charge or less than the customary charge.
7. "Net income" means total gross annual income less:
- a. A hypothetical federal income tax obligation based on the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to income tax under the Internal Revenue Code, and applying:

- (1) The standard deduction for the tax filing status of single;
 - (2) One exemption for the obligor;
 - (3) One additional exemption for each child actually claimed on a disclosed income tax return or one additional exemption for each child, as defined in this section, if a tax return is not disclosed; and
 - (4) Tax tables for a single individual for the most recent year published by the internal revenue service, reduced by one child tax credit for each child's exemption considered under paragraph 3;
- b. A hypothetical state income tax obligation equal to fourteen percent of the amount determined under subdivision a without reduction for child tax credits;
 - c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA) tier I and tier II, and medicare deductions or obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, or medicare tax;
 - d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, intended to afford coverage for the child or children for whom support is being sought, determined by dividing the payment by the total number of persons covered and multiplying the result times the number of such children;
 - e. Payments made on actual medical expenses of the child or children for whom support is sought to the extent it is reasonably likely similar expenses will continue;
 - f. Union dues and occupational license fees if required as a condition of employment;
 - g. Employee retirement contributions, deducted from the employee's compensation and not otherwise deducted under this subsection, to the extent required as a condition of employment;
 - h. Employee expenses for special equipment or clothing required as a condition of employment or for lodging expenses incurred when engaged in travel required as a condition of employment (limited to thirty dollars per night); and

1. Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross income on the obligor's federal income tax return.
8. "Obligee" includes, for purposes of this chapter, an obligee as defined in subsection 8 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support.
9. "Obligor" includes, for purposes of this chapter, an obligor as defined in subsection 9 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.
10. "Split custody" means a situation where the parents have more than one child in common, and where each parent has sole custody of at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-02. Determination of support amount - General instructions.

1. Calculations of child support obligations provided for under this chapter consider and assume that one parent acts as a primary caregiver and the other parent contributes a payment of child support to the child's care.
2. Calculations assume that the care given to the child during temporary periods when the child resides with the obligor or the obligor's relatives do not substitute for the child support obligation.
3. Net income received by an obligor from all sources must be considered in the determination of available money for child support.
4. The result of all calculations which determine a monetary amount ending in fifty cents or more must be rounded up to the nearest whole dollar, and must otherwise be rounded down to the nearest whole dollar.
5. In applying the child support guidelines, an obligor's monthly net income amount ending in fifty dollars or more must be rounded up to the nearest one hundred dollars, and must otherwise be rounded down to the nearest one hundred dollars.
6. The annual total of all income considered in determining a child support obligation must be determined and then divided

by twelve in order to determine the obligor's monthly net income.

7. Income must be documented through the use of tax returns, current wage statements, and other information sufficiently to fully apprise the court of all gross income. Where gross income is subject to fluctuation, particularly in instances involving self-employment, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations must be provided.
8. Calculations made under this chapter are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, particularly circumstances concerning income. If circumstances that materially affect the child support obligation are very likely to change in the near future, consideration may be given to the likely future circumstances.
9. Determination of a child support obligation is appropriate in any matter where the child and both of the child's parents do not reside together.
10. Each child support order must include a statement of the net income of the obligor used to determine the child support obligation, and how that net income was determined.
11. A payment of children's benefits made to or on behalf of a child who is not living with the obligor must be credited as a payment toward the obligor's child support obligation in the month (or other period) the payment is intended to cover, but may not be credited as a payment toward the child support obligation for any other month or period.
12. No amount may be deducted to determine net income unless that amount is included in gross income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-03. Determination of support amount - Split custody.
A support amount must be determined for the child or children in each parent's sole custody. The lesser amount is then subtracted from the greater. The difference is the child support amount owed by the parent with the greater obligation.

History: Effective February 1, 1991.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-04. Minimum support level. A support obligation should be established in each case where the obligor has any income. Even though the obligor's payment is far from sufficient to meet the child's needs, considerations of policy require that all parents understand the parental duty to support children to the extent of the parent's ability. Equally important considerations of policy require the fostering of relationships between parents and children which may arise out of the recognition of parental duty.

History: Effective February 1, 1991.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-05. Determination of net income from self-employment.

1. Net income from self-employment means total income, for internal revenue service purposes, of the obligor and the obligor's business, reduced by the amount, if any, of that total income that is not the obligor's income from self-employment, plus:
 - a. Business expenses attributable to the obligor or a member of the obligor's household for:
 - (1) Employee's or proprietor's benefits, pensions, and profit-sharing plans; and
 - (2) Travel, meals, or entertainment; and
 - b. Payments made to a member of the obligor's household, other than the obligor, to the extent the payment exceeds the fair market value of the service furnished by the household member.
2. "Member of the obligor's household" includes any individual who shares the obligor's home a substantial part of the time, without regard to whether that individual maintains another home.
3. The "obligor's business" includes any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control.
4. If the tax returns are not available or do not reasonably reflect the income from the business, profit and loss statements which more accurately reflect the current status of the business must be used.
5. Businesses may experience significant changes in production and income over time. To the extent that information is reasonably available, the average of the most recent five

years of business operations, if undertaken on a substantially similar scale, must be used to determine business income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-06. Determining the cost of supporting a child living with the obligor. The cost of supporting a child living with the obligor, who is not also a child of the obligee, may be deducted from net income under subsection 4 of section 75-02-04.1-06.1 and is determined by applying the obligor's net income and the total number of children living with the obligor to whom the obligor owes a duty of support, to section 75-02-04.1-10.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-06.1. Determination of support amount in multiple-family cases.

1. This section must be used to determine the child support amount presumed to be the correct amount of child support in all cases involving an obligor who:
 - a. Owes duties of support payable to two or more obligees; or
 - b. Owes a duty of support to at least one obligee and also owes a duty of support to a child living with the obligor who is not also the child of that obligee.
2. If a court consolidates proceedings involving an obligor and two or more obligees, the court must determine all obligations that may be determined in the consolidated proceeding without regard to whom the initial moving party may be.
3. A hypothetical amount that reflects the cost of supporting children living with the obligor, as determined under section 75-02-04.1-06, and a hypothetical amount due to each obligee under this chapter must first be determined for the children living with the obligor and each obligee, whether or not the obligee is a party to the proceeding, assuming for purposes of that determination:
 - a. The obligor has no support obligations except to the obligee in question;
 - b. The guidelines amount is not rebutted; and

- c. The obligor does not have extended visitation.
- 4. A hypothetical amount due to each obligee under this chapter must next be determined for each obligee who is a party to the proceeding, assuming for purposes of that determination:
 - a. The obligor's net income is reduced by:
 - (1) The amount of child support due to all other obligees, as determined under subsection 3; and
 - (2) The cost of supporting a child living with the obligor, who is not also the child of that obligee, as determined under section 75-02-04.1-06;
 - b. The guidelines amount is not rebutted;
 - c. Any support amount otherwise determined to be less than one dollar is determined to be one dollar; and
 - d. The obligor does not have extended visitation.
- 5. a. Except as provided in subdivision b, for each obligee before the court, the support obligation presumed to be the correct amount of child support is equal to one-half of the total of the two amounts determined, with respect to that obligee, under subsections 3 and 4.
- b. Any necessary determination under this section must be made before an adjustment for extended visitation appropriate under section 75-02-04.1-08.1. The "amount otherwise due under this chapter", for purposes of section 75-02-04.1-08.1, is equal to one-half of the total of the two amounts determined, with respect to that obligation, under subsections 3 and 4.
- 6. The fact, if it is a fact, that the obligor is required to pay, or pays, a different amount than the hypothetical amounts determined under subsections 3 and 4 is not a basis for deviation from the procedure described in this section.

History: Effective January 1, 1995; amended effective August 1, 1999.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-07. Imputing income based on earning capacity.

1. For purposes of this section:

- a. "Community" includes any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; and

- b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than prevailing amounts earned in the community by persons with similar work history and occupational qualifications.
- 2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than:
 - a. Six-tenths of prevailing amounts earned in the community by persons with similar work history and occupational qualifications; or
 - b. One hundred sixty-seven times the federal hourly minimum wage.
- 3. Except as provided in subsections 4, 5, and 9, monthly gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.
 - a. An amount equal to one hundred sixty-seven times the hourly federal minimum wage.
 - b. An amount equal to six-tenths of prevailing gross monthly earnings in the community of persons with similar work history and occupational qualifications.
 - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided.
- 4. Monthly gross income based on earning capacity may be imputed in an amount less than would be imputed under subsection 3 if the obligor shows:
 - a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:
 - (1) Who is in the physical custody of the obligor;
 - (2) Who is under the age of fourteen; and
 - (3) For whom there is no other adult caretaker in the parent's home available to meet the child's needs during absence due to employment.
 - b. The obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings

equal to one hundred sixty-seven times the hourly federal minimum wage.

- c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
- 5. Gross income based on earning capacity may not be imputed if the obligor shows that the obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.
 - 6. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable in the community, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.
 - 7. If the obligor fails, upon reasonable request made in any proceeding to establish a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income based on earning capacity equal to the greatest of subdivisions a through c of subsection 3 must be imputed.
 - 8. If the obligor fails, upon reasonable request made in any proceeding to review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income must be imputed based on the greatest of:
 - a. Subdivisions a through c of subsection 3; or
 - b. The obligor's net income, at the time the child support order was entered or last modified, increased at the rate of ten percent per year.
 - 9. Notwithstanding subsections 4, 5, and 6, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for

which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-08. Income of spouse. The income and financial circumstances of the spouse of an obligor should not be considered as income for child support purposes unless the spouse's income and financial circumstances are, to a significant extent, subject to control by the obligor as where the obligor is a principal in a business employing the spouse.

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-08.1. Adjustment for extended visitation.

1. For purposes of this section, "extended visitation" means visitation between an obligor and a child living with an obligee scheduled by court order to exceed sixty or ninety consecutive nights or an annual total of one hundred sixty-four nights.
2. Notwithstanding any other provision of this chapter, if a court order provides for extended visitation between an obligor and a child living with an obligee, the support obligation presumed to be the correct child support amount due on behalf of all children of the obligor living with the obligee must be determined under this subsection.
 - a. Determine the amount otherwise due under this chapter from the obligor for those children.
 - b. Divide the amount determined under subdivision a by the number of those children.
 - c. For each child, multiply the number of that child's visitation nights times .32 and subtract the resulting amount from three hundred sixty-five.
 - d. Divide the result determined under subdivision c by three hundred sixty-five.
 - e. Multiply the amount determined under subdivision b times each decimal fraction determined under subdivision d.

f. Total all amounts determined under subdivision e.

History: Effective August 1, 1999.

General Authority: NOCC 50-06-16, 50-09-25

Law Implemented: NOCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-09. Criteria for rebuttal of guideline amount.

1. The child support amount provided for under this chapter, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:
 - a. The subsistence needs, work expenses, and daily living expenses of the obligor; or
 - b. The income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a custodial parent.
2. The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:
 - a. The increased need if support for more than six children is sought in the matter before the court;
 - b. The increased ability of an obligor, with a monthly net income which exceeds ten thousand dollars, to provide child support;
 - c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;
 - d. The increased needs of children with disabling conditions or chronic illness;
 - e. The increased needs of children age twelve and older;
 - f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;
 - g. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;

- h. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;
 - i. The reduced ability of the obligor to provide support due to travel expenses incurred solely for the purpose of visiting a child who is the subject of the order;
 - j. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection;
 - k. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:
 - (1) Exceed ten percent of the obligor's gross income;
 - (2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;
 - (3) Are not subject to payment or reimbursement from any source except the obligor's income; and
 - (4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor; or
 - l. The reduced ability of the obligor to provide support when two or more of the obligor's children are in foster care or guardianship care.
3. Assets may not be considered under subdivisions g and h of subsection 2, to the extent they:
- a. Are exempt under North Dakota Century Code section 47-18-01;
 - b. Consist of necessary household goods and furnishings; or
 - c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.
4. For purposes of subdivision h of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:

- a. The transaction occurred after the birth of a child entitled to support;
 - b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and
 - c. The obligor's income is less than it likely would have been if the transaction had not taken place.
5. For purposes of subdivision j of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of discretionary purchases or illegal activity.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-10. Child support amount. The amount of child support payable by the obligor is determined by the application of the following schedule to the obligor's monthly net income and the number of children for whom support is being sought in the matter before the court.

Obligor's Monthly Net Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
100 or less	14	17	20	22	24	26
200	28	34	40	44	48	52
300	42	51	60	66	72	78
400	56	68	80	88	96	104
500	75	90	105	120	130	140
600	102	126	144	162	174	192
700	133	161	189	210	231	252
800	168	200	232	264	288	320
900	207	252	288	324	360	387
1000	250	300	350	390	430	470
1100	266	328	384	428	470	511
1200	282	356	418	465	510	553
1300	298	385	452	503	550	594
1400	314	412	486	540	590	635
1500	330	441	520	578	630	677
1600	346	469	554	616	669	718
1700	362	497	588	653	709	759
1800	378	526	622	691	749	800
1900	394	554	656	728	789	842
2000	411	582	690	766	829	883
2100	427	610	724	804	869	924

2200	443	638	758	841	909	966
2300	459	667	792	879	949	1007
2400	475	695	826	916	989	1048
2500	492	723	860	954	1029	1090
2600	508	751	893	992	1068	1131
2700	524	779	927	1029	1108	1172
2800	540	808	961	1067	1148	1213
2900	556	836	995	1104	1188	1255
3000	572	864	1029	1142	1228	1296
3100	588	892	1063	1180	1268	1337
3200	604	920	1097	1217	1308	1379
3300	620	949	1131	1255	1348	1420
3400	636	977	1165	1292	1388	1461
3500	653	1005	1199	1330	1428	1503
3600	669	1033	1232	1368	1467	1544
3700	685	1061	1266	1405	1507	1585
3800	701	1090	1300	1443	1547	1626
3900	717	1118	1334	1480	1587	1668
4000	733	1146	1368	1518	1627	1709
4100	749	1174	1402	1556	1667	1750
4200	765	1202	1436	1593	1707	1792
4300	781	1231	1470	1631	1747	1833
4400	797	1259	1504	1668	1787	1874
4500	814	1287	1538	1706	1827	1916
4600	830	1315	1571	1744	1866	1957
4700	846	1343	1605	1781	1906	1998
4800	862	1372	1639	1819	1946	2039
4900	878	1400	1673	1856	1986	2081
5000	894	1428	1707	1894	2026	2122
5100	910	1456	1741	1932	2066	2163
5200	926	1484	1775	1969	2106	2205
5300	942	1513	1809	2007	2146	2246
5400	958	1541	1843	2044	2186	2287
5500	975	1569	1877	2082	2226	2329
5600	991	1597	1910	2120	2265	2370
5700	1007	1625	1944	2157	2305	2411
5800	1023	1654	1978	2195	2345	2453
5900	1039	1682	2012	2232	2385	2494
6000	1055	1710	2046	2270	2425	2535
6100	1071	1738	2080	2308	2465	2576
6200	1087	1766	2114	2345	2505	2618
6300	1103	1795	2148	2383	2545	2659
6400	1119	1823	2182	2420	2585	2700
6500	1136	1851	2216	2458	2625	2742
6600	1152	1879	2249	2496	2664	2783
6700	1168	1907	2283	2533	2704	2824
6800	1184	1936	2317	2571	2744	2865
6900	1200	1964	2351	2608	2784	2907
7000	1216	1992	2385	2646	2824	2948
7100	1232	2020	2419	2684	2864	2989
7200	1248	2048	2453	2721	2904	3031
7300	1264	2077	2487	2759	2944	3072
7400	1280	2105	2521	2796	2984	3113

7500	1297	2133	2555	2834	3024	3155
7600	1313	2161	2588	2872	3063	3196
7700	1329	2189	2622	2909	3103	3237
7800	1345	2218	2656	2947	3143	3278
7900	1361	2246	2690	2984	3183	3320
8000	1377	2274	2724	3022	3223	3361
8100	1393	2302	2758	3060	3263	3402
8200	1409	2330	2792	3097	3303	3444
8300	1425	2359	2826	3135	3343	3485
8400	1441	2387	2860	3172	3383	3526
8500	1458	2415	2894	3210	3423	3568
8600	1474	2443	2927	3248	3462	3609
8700	1490	2471	2961	3285	3502	3650
8800	1506	2500	2995	3323	3542	3691
8900	1522	2528	3029	3360	3582	3733
9000	1538	2556	3063	3398	3622	3774
9100	1554	2584	3097	3436	3662	3815
9200	1570	2612	3131	3473	3702	3857
9300	1586	2641	3165	3511	3742	3898
9400	1602	2669	3199	3548	3782	3939
9500	1619	2697	3233	3586	3822	3981
9600	1635	2725	3266	3624	3861	4022
9700	1651	2753	3300	3661	3901	4063
9800	1667	2782	3334	3699	3941	4104
9900	1683	2809	3368	3736	3981	4146
10000	1699	2838	3402	3774	4021	4187

or more

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-82-84.1-11. Parental responsibility for children in foster care or guardianship care. It is important that parents maintain a tie to and responsibility for their child when that child is in foster care. Financial responsibility for the support of that child is one component of the maintenance of the relationship of parent and child. Parents of a child subject to a guardianship order under North Dakota Century Code chapter 27-20 or 30.1-27 remain financially responsible for the support of that child.

1. In order to determine monthly net income, it is first necessary to identify the parent or parents who have financial responsibility for any child entering foster care or guardianship care, and to determine the net income of those financially responsible parents. If the parents of a child in foster care or guardianship care reside together, and neither parent has a duty to support any child who does not either reside with the parents or receive foster care or guardianship care, the income of the parents must be combined and treated as the income of the obligor. In all other cases, each parent is treated as an obligor, and each parent's support

obligations must be separately determined. If an obligor under this section has a child living with the obligor, the support obligation must be determined through applications of sections 75-02-04.1-06 and 75-02-04.1-06.1.

2. Each child in foster care or guardianship care is treated as an obligee, and support obligations must be separately determined for each such child.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-12. Uncontested proceedings. In a proceeding where the obligor appears, but does not resist the child support amount sought by the obligee, and in proceedings where the parties agree or stipulate to a child support amount, credible evidence describing the obligor's income and financial circumstances, which demonstrates that the uncontested or agreed amount of child support conforms to the requirements of this chapter, must be presented.

History: Effective February 1, 1991.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-13. Application. The child support guideline schedule amount is rebuttably presumed to be the correct amount of child support in all child support determinations, including both temporary and permanent determinations, and including determinations necessitated by actions for the support of children of married persons, actions seeking domestic violence protection orders, actions arising out of divorce, actions arising out of paternity determinations, actions based upon a claim for necessities, actions arising out of juvenile court proceedings, interstate actions for the support of children in which a court of this state has the authority to establish or modify a support order, and actions to modify orders for the support of children. The fact that two or more such actions may be consolidated for trial or otherwise joined for convenient consideration of facts does not prevent the application of this chapter to those actions.

History: Effective February 1, 1991; amended effective January 1, 1995.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

INSTRUCTIONS FOR CHILD SUPPORT GUIDELINES WORKSHEET

1. **Citations:** All parenthetical references are to specific sections and subsections of Ch. 75-02-04.1, North Dakota Administrative Code.
2. **Schedules:** The base worksheet is supplemented by schedules to permit the computation of specific elements of the guidelines. The schedules are as follows:
 - Schedule A: Imputed Income
 - Schedule B: Self-Employment Income
 - Schedule C: Multiple Families
 - Schedule D: Adjustment For Extended Visitation
3. **Advisory:** The worksheet and accompanying schedules are designed to be tools to assist in the implementation of the child support guidelines. They are not part of the Administrative Code nor are they intended as substitutes for detailed analysis and working knowledge of the guidelines in determining the correct amount of child support.

**CHILD SUPPORT GUIDELINES
WORKSHEET
(NDAC CH. 75-02-04.1)**

NONCUSTODIAL PARENT/OBLIGOR: _____
CUSTODIAL PARENT/OBLIGEE: _____

1. GROSS ANNUAL EMPLOYMENT INCOME:

Actual
 Source of financial data used; i.e., tax return,
 pay stubs, etc.

Imputed (from Schedule A)
Total gross annual employment income

2. OTHER GROSS ANNUAL INCOME:

Children's benefits -01(3)&(5)
Military Subsistence -01(5)
Spousal Support -01(5)
Unemployment/Workers Comp. Benefits -01(5)
Social Security benefits -01(5)
Pensions/Veterans Benefits/Retirement Income -01(5)
Earned Income Tax Credit -01(5)
Dividends and Interest -01(5)
In-kind Income -01(5)&(6)
Other
Total other gross annual income

3. ANNUAL NET INCOME FROM SELF-EMPLOYMENT (from Schedule B)

4. TOTAL GROSS ANNUAL INCOME (total of Lines 1, 2 and 3)

5. ANNUAL DEDUCTIONS:

Federal Income Tax* -01(7)(a)
State Income Tax* -01(7)(b)
FICA/Medicare/RRTA -01(7)(c)
Medical insurance for children* -01(7)(d)
Other Medical expenses for children -01(7)(e)
Required union dues and
 occupational license fees -01(7)(f)
Required retirement contributions -01(7)(g)
Required employee expenses -01(7)(h)&(i)
Total annual deductions

* from calculations on page 2

6. TOTAL NET ANNUAL INCOME (Line 4 less Line 5)

7. TOTAL NET MONTHLY INCOME (Line 6 ÷ 12)

GUIDELINES APPLICATION:

Number of children for whom support is being determined _____

Support amount from guidelines -10 _____

Split custody -03

1. Support amount due from obligor _____

2. Support amount due from obligee _____

3. Split custody support amount _____

(Subtract the lesser amount from the greater amount (Lines 1 and 2))

Multiple families (Schedule C) _____

Extended visitation (Schedule D) _____

CHILD SUPPORT AMOUNT _____**HYPOTHETICAL INCOME TAX OBLIGATIONS****Federal -01(7)(a)**

1. Total gross annual income _____

2. Amount of Line 1 not subject to income tax per IRC _____

3. Gross annual income subject to income tax per IRC (Line 1 - Line 2) _____

4. Deductions:

Standard deduction (tax filing status of single) _____

One exemption for the obligor _____

One additional exemption for each "child" _____

("child" as defined in -01(01)) # exemptions _____

Total deductions _____

5. Line 3 less Line 4 _____

6. Apply Line 5 to tax tables for a single individual _____

7. Child Tax Credit (for each child's exemption considered in line 4) _____

8. Line 6 less Line 7 _____

LINE 8 TOTAL IS THE HYPOTHETICAL FEDERAL TAX OBLIGATION**State -01(7)(b)**

Line 6 from above X .14 _____

THIS IS THE HYPOTHETICAL STATE TAX OBLIGATION**MEDICAL SUPPORT**

Medical insurance calculation:

(total premium cost ÷ total # of persons covered) X #of children covered for whom support is being determined) = _____

Medical support ordered? _____ Yes _____ No

Medical insurance available? _____ Yes _____ No

Comments:

**CHILD SUPPORT GUIDELINES
SCHEDULE A - IMPUTED INCOME
(NDAC 75-02-04.1-07)**

NONCUSTODIAL PARENT/OBLIGOR: _____
CUSTODIAL PARENT/OBLIGEE: _____

This schedule is for use when employment income must be imputed to the obligor who is unemployed or underemployed. Presumption of underemployment exists if the obligor's gross income from earnings is less than 60% of prevailing amounts earned in the community by persons with similar work history and occupational qualifications, or less than 167 times the federal hourly minimum wage. A source of information for data to use in imputing income is the North Dakota Occupational Wages handbook, a publication by Job Service of North Dakota which contains wage and salary information by region and select cities. The publication is free

1. **Prevailing Income Amount:** _____
Occupation: _____
Source: _____

2. **Imputed Income:** The greater of: -07(3)
- a. 167 times federal minimum wage X 12 = _____
(\$5.15 per hour \$860.00)
- b. .6 times prevailing monthly earnings as
determined in #1 above X 12 = _____
- c. .9 times obligor's greatest average gross _____ X 12 = _____
monthly earnings in any 12 consecutive
months over the past 36 months _____
- Less:** Actual gross annual earnings _____
- Presumed Imputed Annual Income:** _____

3. **Obligor noncooperation:**
In **review** proceedings, if the obligor fails to furnish reliable information on income, income is imputed at greater of:
- a. Highest of 2. a. through c. above, or
- b. Net income when order was entered or last modified plus 10% increase per year. -07(08)

In proceedings to **establish** a child support obligation, if the obligor fails to furnish reliable information on income, income is imputed at the greatest of 2. a. through c. above. -07(07)

Exceptions: Review subsections 4, 5 and 6 of section 75-02-04.1-07 for exceptions to the imputation of income based on the greater of 2. a. through c. above.

CHILD SUPPORT GUIDELINES
SCHEDULE B - SELF-EMPLOYMENT INCOME
(NDAC 75-02-04.1-05)

NONCUSTODIAL PARENT/OBLIGOR: _____
CUSTODIAL PARENT/OBLIGEE: _____

1. **TOTAL INCOME** -05(1) _____
(This amount is taken from either a tax return or from a profit and loss statement. If it is taken from a tax return, use the "total income" line on the IRS Form 1040; i.e., line 22 of 1998 tax return).
2. **DEDUCTION** Amount of total income that does not come from self-employment _____
Total Deductions _____
3. **ADDITIONS**
Business expenses attributable to the obligor or a member of the obligor's household for:
 benefits, pensions, profit-sharing plans _____
 travel, meals, entertainment _____
Payments to household member to extent payment exceeds fair market value of services _____
Total Additions _____
4. **ANNUAL NET INCOME FROM SELF-EMPLOYMENT** _____
((Line 1 - total of Line 2) + total of Line 3)

Enter the amount from Line 4 onto Worksheet Line 3.

Note: When dealing with self-employment income, the guidelines contemplate a calculation of a 5-year average of self-employment income to account for the significant changes which may occur in the business. If multiple years are being calculated, it will be necessary to complete multiple schedules, add the amounts on Line 4 of each schedule and divide that sum by the number of years. That quotient must then be entered onto Worksheet Line 3.

CHILD SUPPORT GUIDELINES
SCHEDULE C - MULTIPLE FAMILIES
(NDAC 75-02-04.1-06 and 75-02-04.1-06.1)

NONCUSTODIAL PARENT/OBLIGOR: _____
CUSTODIAL PARENT/OBLIGEE: _____

This schedule is for use in determining the support amount where the obligor owes duties of support payable to two or more obligees (complete Part 2 only), or owes a duty of support to a child living with the obligor who is not also the child of the obligee and also owes a duty of support payable to at least one obligee (complete Parts 1 and 2).

Part 1: This Part is for use in determining the deduction from net income for the cost of supporting a child living with the obligor. - 06

1. Obligor's net monthly income (from Worksheet Line 7) _____
2. Total number of children living with the obligor
(not including stepchildren) _____
3. Apply lines 1 and 2 to guidelines -10 _____

Enter the amount from Line 3 onto Line 1 under "Children Living With the Obligor" Part 2.

Part 2: -06.1

Obligor's net monthly income (from Worksheet Line 7) _____

	Children Living With the Obligor	Custodial Parent/ Obligee	Other Obligee	Other Obligee
1. Support Amount * -06.1(3)	_____	_____	_____	_____
2. Obligor's net income reduced by <u>other</u> obligations from line 1 -06.1(4)(a)		_____		
3. Support amount ** -06.1(4)		_____		
4. Line 1 + Line 3		_____		
5. Support Amount (Line 4 + 2)		_____		

• A hypothetical child support amount based on section 75-02-04.1-06 for children living with the obligor, who are not also children of the obligee, and based on application of the guidelines to the obligor's net income to determine each obligation assuming no other obligation.

** A hypothetical child support amount based on application of the guidelines to obligor's net income reduced by those hypothetical support obligations, determined on line 1, for all other obligees and children living with the obligor.

Note: The allowance for children living with the obligor is not used if the children in the obligor's home are also the children of the obligee such as in split custody situations.

Note: After completing Schedule C, if an adjustment for extended visitation is required, go to Schedule D to complete the calculation.

CHILD SUPPORT GUIDELINES
SCHEDULE D - ADJUSTMENT FOR EXTENDED VISITATION
(NDAC 75-02-04.1-08.1)

NONCUSTODIAL PARENT/OBLIGOR: _____
CUSTODIAL PARENT/OBLIGEE: _____

This schedule is for use when a court order provides for extended visitation between an obligor and a child living with an obligee and visitation exceeds sixty of ninety consecutive nights or an annual total of 164 nights.

1. Support Amount (from Worksheet or Schedule C) -08.1(2)(a) _____
2. Total number of children for whom support has been determined _____
3. Line 1 divided by Line 2 -08.1(2)(b) _____

	Child 1	Child 2	Child 3
4. Total number of visitation nights, per year	_____	_____	_____
5. Line 4 x .32 -08.1(2)(c)	_____	_____	_____
6. 365 less amount from Line 5 -08.1(2)(c)	_____	_____	_____
7. Line 6 + 365 -08.1(2)(d)	_____	_____	_____
8. Line 3 x Line 7 -08.1(2)(e)	_____	_____	_____
Support Amount (total of all Line 8) -08.1(2)(f)		_____	

Note: If all children have the same visitation schedule, it is only necessary to fill in the columns for one child and then multiply the amount in Line 8 by the total number of children to get the total child support amount.

Child Support Scenario: Multiple Families - Children Residing With the Obligor

John and Ann have one child, Angie. John and Ann divorce with Ann as the custodial parent and John ordered to pay child support in the amount of \$168 per month based on his net income of \$800 per month. Some years later, John remarries. John and his new spouse, Betty, have two children together (Ben and Beth) who reside with them. John's net income is now **\$1500** per month and John is before the court for a possible adjustment of his child support obligation for Angie.

As John has children for whom he owes a duty of support residing with him (Ben and Beth), N.D. Admin. Code §§ 75-02-04.1-06 and -06.1 apply. Schedule C, Parts 1 and 2 must be completed. John's "new" child support obligation for Angie is \$298 per month as shown on the attached Schedule C.

CHILD SUPPORT GUIDELINES
SCHEDULE C - MULTIPLE FAMILIES
(NDAC 75-02-04.1-06 and 75-02-04.1-06.1)

NONCUSTODIAL PARENT/OBLIGOR: JOHN
CUSTODIAL PARENT/OBLIGEE: ANN

This schedule is for use in determining the support amount where the obligor owes duties of support payable to two or more obligees (complete Part 2 only), or owes a duty of support to a child living with the obligor who is not also the child of the obligee and also owes a duty of support payable to at least one obligee (complete Parts 1 and 2).

Part 1: This Part is for use in determining the deduction from net income for the cost of supporting a child living with the obligor. - 06

1. Obligor's net monthly income (from Worksheet Line 7) 1500
2. Total number of children living with the obligor
(not including stepchildren) 2 (**BEN, BETH**)
3. Apply lines 1 and 2 to guidelines -10 441

Enter the amount from Line 3 onto Line 1 under "Children Living With the Obligor" Part 2.

Part 2: -06.1

Obligor's net monthly income (from Worksheet Line 7)		<u>1500</u>			
		(ANN)			
		(BEN, BETH)	Custodial	Other	Other
		Children Living	Parent/	Obligor	Obligor
		With the Obligor	Obligee	Obligee	Obligee
1.	Support Amount * -06.1(3)	<u>441</u>	<u>330</u>		
2.	Obligor's net income reduced by <u>other</u> obligations from line 1 -06.1(4)(a)		<u>1059</u> (1500 - 441)		
3.	Support amount ** -06.1(4)		<u>266</u>		
4.	Line 1 + Line 3		<u>596</u> (330 + 266)		
5.	Support Amount (Line 4 ÷ 2)		<u>298</u> (596 ÷ 2)		

- * A hypothetical child support amount based on section 75-02-04.1-06 for children living with the obligor, who are not also children of the obligee, and based on application of the guidelines to the obligor's net income to determine each obligation assuming no other obligation.

- ** A hypothetical child support amount based on application of the guidelines to obligor's net income reduced by those hypothetical support obligations, determined on line 1, for all other obligees and children living with the obligor.

Note: The allowance for children living with the obligor is not used if the children in the obligor's home are also the children of the obligee such as in split custody situations.

Note: After completing Schedule C, if an adjustment for extended visitation is required, go to Schedule D to complete the calculation.

Preliminary data from a study conducted by Indiana University was used as source material in compiling the attached charts. The charts show ranking of states, from low to high, using 1999 child support amounts for four case scenarios. Indiana University's most recently published similar study, Interstate Comparisons of Child Support Orders Using State Guidelines, reported 1997 child support amounts.

The four scenarios and levels are as follows:

Mother and father are divorced. Father lives alone. Mother and the party's two children, ages 7 and 13, live together. Father pays union dues of \$30 per month and the health insurance for the two children at \$25 per month. Mother incurs monthly employment-related child care costs of \$150. There are no extenuating factors to be added or considered for this unit. The gross combined monthly income for this family is as follows:

Combined \$1200	-	Father \$720	Mother \$480
Combined \$2500	-	Father \$1500	Mother \$1000
Combined \$4400	-	Father \$2640	Mother \$1760
Combined \$10500	-	Father \$6300	Mother \$4200

Finally, the father files taxes as a single person with one deduction, while the mother files taxes as the head of a household with three deductions. The father spends less than 10% of this time with his children. Union dues are a mandatory condition of employment.

**\$720 Father's Income
1999 Preliminary Data**

Rank	State	Amount
1	Oklahoma	0.00
2	Connecticut	0.00
3	Illinois	10.00
4	Montana	16.00
5	New York	25.00
6	Alaska	38.00
7	Nebraska	50.00
8	Vermont	50.00
9	New Hampshire	50.00
10	North Carolina	50.00
11	Minnesota	73.00
12	Hawaii	100.00
13	West Virginia	112.00
14	Mississippi	115.20
15	Delaware	117.00
16	North Dakota	126.00
17	Utah	131.00
18	Massachusetts	136.41
19	Pennsylvania	137.00
20	Michigan	141.18
21	Texas	148.64
22	California	166.00
23	Arkansas	177.00
24	Georgia	184.00
25	Iowa	187.00
26	Tennessee	200.00
27	Nevada	200.00
28	District of Columbia	208.00

\$720 - 1999, cont.

Rank	State	Amount
29	Missouri	219.00
30	Oregon	230.00
31	Wyoming	232.14
32	Arizona	247.00
33	Ohio	252.72
34	Rhode Island	253.00
35	Idaho	256.00
36	South Carolina	259.40
37	New Jersey	260.00
38	Colorado	261.00
39	Indiana	265.00
40	Florida	265.01
41	Kansas	270.50
42	Alabama	280.00
43	Washington	281.60
44	Virginia	289.00
45	New Mexico	290.00
46	Kentucky	290.00
47	Maine	290.11
48	Louisiana	292.00
49	Maryland	295.00
50	Wisconsin	300.00
51	South Dakota	302.00

CD= Court Discretion

North Dakota	126.00
mean	179.00
median	200.00
standard deviation	96.90

**\$1500 Father's Income
1999 Preliminary Data**

Rank	State	Amount
1	Mississippi	240.00
2	Montana	250.00
3	Oklahoma	295.40
4	Texas	298.34
5	Illinois	311.00
6	Alaska	313.00
7	New York	346.00
8	North Dakota	356.00
9	Iowa	362.00
10	Delaware	367.00
11	Arkansas	372.00
12	Nevada	375.00
13	Georgia	383.00
14	Tennessee	393.00
15	Vermont	393.00
16	Nebraska	398.07
17	Minnesota	399.00
18	California	407.00
19	Missouri	408.00
20	Wyoming	408.94
21	Colorado	409.00
22	Indiana	413.00
23	New Hampshire	419.00
24	Oregon	421.00
25	Maine	433.00
26	Alabama	433.00
27	Connecticut	435.00
28	Idaho	435.00

\$1500 - 1999, cont.

Rank	State	Amount
29	Ohio	436.28
30	South Carolina	437.30
31	Kentucky	443.00
32	Virginia	446.00
33	Utah	447.00
34	Maryland	449.00
35	Louisiana	451.00
36	South Dakota	456.00
37	Florida	457.10
38	District of Columbia	458.00
39	West Virginia	458.30
40	New Jersey	460.00
41	New Mexico	463.00
42	Massachusetts	470.51
43	North Carolina	471.00
44	Michigan	471.42
45	Rhode Island	481.00
46	Arizona	481.93
47	Washington	502.82
48	Hawaii	503.00
49	Kansas	570.00
50	Pennsylvania	585.00
51	Wisconsin	625.00

CD= Court Discretion

North Dakota	356.00
mean	421.62
median	433.00
standard deviation	74.12

**\$2640 Father's Income
1999 Preliminary Data**

Rank	State	Amount
1	Oklahoma	415.40
2	Mississippi	422.40
3	Montana	464.00
4	Texas	521.06
5	Arkansas	529.00
6	Illinois	539.00
7	Alaska	550.00
8	Missouri	554.00
9	Idaho	556.00
10	South Carolina	573.80
11	Iowa	577.00
12	North Dakota	582.00
13	Ohio	585.24
14	New Mexico	588.00
15	Indiana	595.00
16	Colorado	610.00
17	Maine	614.86
18	Utah	616.00
19	Vermont	622.50
20	South Dakota	626.00
21	West Virginia	626.30
22	Arizona	628.35
23	New York	630.00
24	Wyoming	631.51
25	Alabama	634.00
26	North Carolina	634.00
27	Minnesota	635.00
28	Kentucky	635.00

\$2640 - 1999, cont.

Rank	State	Amount
29	Virginia	641.00
30	Washington	641.42
31	Delaware	655.00
32	Maryland	655.00
33	Nevada	660.00
34	Louisiana	667.00
35	Michigan	667.24
36	New Hampshire	670.00
37	Tennessee	670.00
38	Georgia	673.00
39	Rhode Island	677.00
40	Hawaii	684.00
41	Oregon	686.00
42	California	703.00
43	Connecticut	717.00
44	New Jersey	724.00
45	Florida	733.37
46	Massachusetts	789.06
47	Pennsylvania	809.00
48	Kansas	812.00
49	District of Columbia	821.00
50	Nebraska	970.98
51	Wisconsin	1100.00

CD= Court Discretion

North Dakota	582.00
mean	647.48
median	634.00
standard deviation	116.48

**\$6300 Father's Income
1999 Preliminary Data**

Rank	State	Amount
1	Idaho	863.00
2	Utah	903.00
3	Montana	916.00
4	Missouri	935.00
5	Arkansas	998.00
6	South Carolina	999.80
7	Nevada	1000.00
8	Vermont	1007.79
9	Mississippi	1008.50
10	Kentucky	1013.00
11	Maine	1026.21
12	Ohio	1026.88
13	Virginia	1042.00
14	North Carolina	1050.00
15	West Virginia	1051.70
16	Iowa	1054.00
17	Washington	1055.54
18	Arizona	1060.83
19	Colorado	1066.00
20	South Dakota	1071.00
21	Nebraska	1087.28
22	Michigan	1091.12
23	Louisiana	1092.00
24	New Mexico	1094.00
25	Indiana	1112.00
26	Texas	1114.75
27	Oregon	1115.00
28	New Jersey	1131.00

\$6300 - 1999, cont.

Rank	State	Amount
29	Illinois	1145.00
30	Connecticut	1147.00
31	Delaware	1167.00
32	Florida	1189.83
33	Alaska	1190.00
34	Wyoming	1192.80
35	North Dakota	1231.00
36	Rhode Island	1236.00
37	Minnesota	1252.00
38	California	1362.00
39	Hawaii	1392.00
40	Tennessee	1417.00
41	New York	1462.00
42	New Hampshire	1475.50
43	District of Columbia	1495.00
44	Pennsylvania	1536.00
45	Wisconsin	1575.00
46	Georgia	1607.00
47	Kansas	1796.00
	Alabama	CD
	Maryland	CD
	Massachusetts	CD
	Oklahoma	CD

CD= Court Discretion

North Dakota	1231.00
mean	1167.10
median	1094.00
standard deviation	206.41

Mr chairman & members of the Committee good morning.
My name is Mark Giechtner Father of Two 8 & 9 yr olds
Bismarck & member of R-Kids

I am in favor of SB 2373 because it is in
the best interest of our children of today & tomorrow.

I myself have income variations of \$10,000 yearly.
My first year at Melroe was \$47,000 then \$35,000 then
\$39,000 and last year at \$45,000. My supervisor came
to us last week Monday and said no more OT for at
least till June maybe longer. We have been told of
business projections of a slump to last till end of
2002. Then there is the people who work seasonal
jobs. I did for years it was tuff to make it, and
I wasn't divorced then.

Now I have child support payments of near \$800
per month, I have ~~about~~ my children 5 days a week
Mon - Fri total of 22 days per month. So I am the
one that gets them to the after school activities
like basketball - football, baseball, swimming, Scouts, and
CBO. Not to mention I pay for most of them out
of my pocket plus gas & meals. I get no compensation
for those plus I am trying to put some money away
for college for them. God knows she is not.

It was not my choice to get a divorce or to have the \$35,000 in legal fees to get divorced & loose custody of the ones I love to work for.

Our O.T. which is in no way guaranteed or on any schedule is what guys & women like me use to pay for those things for our children & save for their college. And yes some is also used for us to get ahead so maybe, just maybe I could afford on newer than 20 year old car with 200,000 + miles on it.

Many of us are dedicated to our children and to better our lives as well. Many of them work for the same company I do. Male & female alike I know of both.

The Child support ~~affairs~~ Guidelines in my opinion are in desperate need of reorganizing. They seem to really want to get that extra \$3.50 for every dollar they collect from us to put towards their welfare programs instead of letting us better our selves & the most important the children we love and are ~~dedicated~~ dedicated to.

Mark Fiechtner

614 W Rosser Ave

Bismarck N.D 58501

255-6357

mlmfiechtner@cs.com



ROBY & MARGARET
KOTTRE
<rmkottre@bllgate.co
m>

To: ddevor@state.nd.us
cc:
Subject: SB 2373

02/18/01 10:31 PM
Please respond to
rmkottre

Dick,

This is what we had originally considered among our group it is a shortened version from MN guidelines.

Gross Income - monies from overtime and additional jobs in figuring child support

Shall not consider compensation received by an obligor for employment in excess of a 40 hour work week if that employment began after entry of the existing support order and the excess employment is voluntary, or the excess employment is additional part time employment.

I think our biggest problem with this wording was the word voluntary because mandatory overtime is not guaranteed nor consistent, plus one may have both voluntary and mandatory from the same employer, who is going to keep track of how many hours the employer had as mandatory vs the number of overtime hours that were actually worked.

Below was taken directly from the MN guidelines:

"Net income" does not include:

(1) the income of the obligor's spouse, but does include in-kind payments received by the obligor in the course of employment, self-employment, or operation of a business if the payments reduce the obligor's living expenses; or

(2) compensation received by a party for employment in excess of a 40-hour work week, provided that:

(i) support is nonetheless ordered in an amount at least equal to the guidelines amount based on income not excluded under this clause; and

(ii) the party demonstrates, and the court finds, that:

(A) the excess employment began after the filing of the petition for dissolution;

(B) the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;

(C) the excess employment is voluntary and not a condition of employment;

(D) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of an hour; and

(E) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

I also found this in Colorado's guidelines which I thought had some good wording:

B) "Gross income" does not include benefits received from means-tested public assistance programs, including but not limited to assistance provided under the Colorado works program, as described in part 7 of article 2 of title 26, C.R.S., supplemental security income, food stamps, and general assistance.

(C) "Gross income" includes overtime pay only if the overtime is required by the employer as a condition of employment. **"Gross income" does not include income from additional jobs that result in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment.**

I hope this is of some help to you and the other committee members, this will at least show them that there are other states that do take this into consideration and I believe it was Missouri that had some wording about overtime and earnings from secondary jobs may be included in whole or in part, in gross income in appropriate conditions.

Thank you for your time, and again I hope that this will be of some help to you all.

Margaret Kottre
Sec/Treas R-KIDS

Testimony on Senate Bill 2373
Senator Dick Dever

Madam Chair, members of the committee, for the record, I am Senator Dick Dever. I represent the good people of District 32, which includes most of south Bismarck.

Senate Bill 2373 is about responsible parents. When a couple goes through a divorce, one parent gets the children and the other parent pays child support. Sometimes the amount of child support that parent pays leaves them in an impoverished situation. In order to make ends meet, they need to get a second job. Sometimes that second job is to support a second family.

This bill simply allows the judge to determine that the income from the second job does not have to be figured into the child support. It also allows that income from irregular overtime does not have to be considered.

It is important to know that the judge makes the determination that the decision to exclude the extra income is not detrimental to the child and that he must make a written finding to that effect.

The changes in the bill in the Senate were to clarify what constitutes a second income. One question that was asked on the floor of the Senate concerned bonus income from a job. I believe it could be considered the same as irregular overtime and determined by the judge.

This bill was introduced at the request of a group called R-KIDS -- Remembering Kids In Divorce Settlements. There are several members here who will be testifying. I would be happy to respond to any questions.

Rep. Chairman Price & Human Serv. Committee Members,
My name is Margaret Kotho. I am an unpaid lobbyist for the R-KIDS - Remembering Kids In Divorce Settlements.

The members of the R-KIDS organization are asking for your support of SB 2373. This bill is such a positive step forward. We have been fighting for changes during the last 3 sessions to make things more equal, and this is just one great step in accomplishing our goal of equality.

Obligors sometimes take a second job to help support their new family additional financial support may be needed because of rising medical expenses vehicle repairs or may be they just need some extra spending money to support their children during their visitation times. Now imagine how the obligor feels when the income from that 2nd job is no longer there and their child support was based on the income from that second job. If it was the obligor's decision to discontinue the 2nd job, I can tell you it was an agonizing decision, because they know without that income they have now put their new family in jeopardy, either they take money needed to support the new family to continue to meet their monthly support, or they support their family as needed and hope the arrears is not enough of a threat to lose their licenses. They may even decide to

hire a lawyer for a downward deviation knowing the request may be denied either way the new family is jeopardized.

Overtimes and bonuses are not a guarantee from year to year much less from month to month. If an obligor's income was reviewed on a year in which the employer had the business for overtime but the next year or even next 2, 3, 4 years the employer's business did not allow for overtime, they are still required to pay the same monthly support. The child support was based on overtime that never was and never will be guaranteed. Once again the current family may be deprived of ample food supply, medical treatment or medication, or a warm house so do not go into arrears.

Obligors are not trying to get out of paying child support they just want to be able to take care of all of their family members on a more fair and equal manner. Please recommend a Do Pass on SB 2373.

Margaret Rothe

License #587

9703 Oak Dr B15 58503

701-258-8437

rmkothre@obligate.com

SB 2373 Gross Income under Child Support Guidelines of DHS
Senate Judiciary
Ft Lincoln Room
Monday 2/12/01

Chairman Traynor and members of the Senate Judiciary Committee,

My name is Daniel Biesheuvel; I am a non-representative member of R-KIDS (Remembering Kids In Divorce Settlements).

During the 1997-1998 Interim in the Child Support Committee, the committee and R-KIDS discussed the subject of limiting child support obligation to one 40-hour a week's income and that job's regular overtime. As a spokesperson for R-KIDS, I learned it was typically necessary for the non-custodial parents to provide for their existing household with the income from the second job. At first I wanted child support to be calculated from only the primary 40-hour full time job, excluding all overtime. But in discussion with members of the committee, who were open to suggestions, the Department of Human Services, who wants to include every shred of income in the obligation, and custodial parents, who do not want to see any available income overlooked for child support, R-KIDS compromised in the discussion to include the primary job's income and regular overtime. R-KIDS did this based on the conclusion that this regular overtime is foreseeable as regular income. We argued to exclude second jobs, all overtime not received on a regular basis, temporary mandatory overtime or temporary voluntary overtime. The agencies argued vehemently against this stance.

The reason I do not agree with including non-typical income, is that the non-custodial parent usually seeks second employment in order to afford his existing household the needed income to subsist. They need the extra income to make up for the income expended as child support and other expenses of raising those children. In some cases, second jobs temporary and taken to get over an economical hump. I completely agree that child support is necessary, and should be afforded the children. But it should not infringe on the rights of the existing family to support them. When you fill out a bank loan form, you are not required to include second jobs or irregular overtime. So why must you do it for child support?

The major argument R-KIDS heard during that interim was the requirement that the children receiving support must be afforded a "lifestyle they were accustomed to before the divorce". I argued that after a divorce no one's lifestyle is the same. A family has been split up, and the parents are not in a place to shoulder responsibilities together as before. The combined income is lost, and the expenses are basically doubled due to two new households. To argue that anyone should be guaranteed the same kind of lifestyle is impossible and ridiculous. Especially when the new family is not afforded that guarantee.

The new argument is the importance of guaranteeing the custodial parent support for their "in-kind contribution" or the intangible cost of just being a parent. Yet ignored is the non-custodial parent's obvious intangible cost for that same in-kind contribution to their new family. Anyway, isn't that the duties of being a parent? We shouldn't have to 'pay' someone for doing his or her parental duty.

The last insult is telling a noncustodial parent, who has just been told he must pay 27-47% of his income to the custodial parent in the form a tax-free gift, that he will be taxed for. Then they will include his much-needed extra income in figuring the support obligation, while his new family is ignored.

The second job and occasional allowable overtime, to many divorced parents paying child support, is the difference between making ends meet, feeding himself or feeding his new family. Don't keep these people in indentured enslavement by taking that income away from them too. Take it from a non-custodial parent who was there.

Thank you, and I will try to answer any questions.

Daniel Biesheuvel

SB 2373 -- Gross Income under Child Support Guidelines of DHS
House Human Services, Ft Union Room: Monday 3/12/01 10:15 am

Chairman Price and Members of the House Human Services Committee.

My name is Daniel Biesheuvel; I am a non-representative member of R-KIDS (Remembering Kids In Divorce Settlements).

During the 1997-1998 Interim, the Child Support Committee and R-KIDS discussed the subject of limiting child support obligation to one 40-hour a week's income and that job's regular overtime. At that time, as a spokesperson for R-KIDS, I learned it was typically necessary for the non-custodial parents to provide for their existing household with the income from a temporary second job. At first I wanted child support to be calculated from only the primary 40-hour full time job, excluding any second job and all overtime. But in discussion with members of the committee, who were open to suggestions, the Department of Human Services, who wants to include every shred of income in the obligation, and custodial parents, who do not want to see any available income overlooked for child support, R-KIDS compromised in the discussion to include the primary job's income and regular overtime. R-KIDS did this based on the conclusion that this regular overtime is foreseeable as regular income. We argued to exclude second jobs, all overtime not received on a regular basis, temporary mandatory overtime or temporary voluntary overtime. This income is not regular nor necessarily permanent. The agencies argued against this stance.

The reason I do not agree with including non-typical income, is that the non-custodial parent usually seeks second employment in order to afford his existing household the needed income to subsist. They need the extra income to make up for the income expended as child support and other expenses of raising the children of that relationship. In some cases, second jobs are temporary and taken to get over an economical hump. I completely agree that child support is necessary, and should be afforded the children. But it should not infringe on the rights of the existing family to support. When you fill out a bank loan form, you are not required to include temporary second jobs or irregular overtime. So why must you do it for child support?

The major argument R-KIDS heard during that interim was the requirement that the children receiving support must be afforded a "lifestyle they were accustomed to before the divorce". I argued that after a divorce no one's lifestyle is the same. A family has been split up, and the parents are not in a place to shoulder responsibilities together as before. The combined income is lost, and the expenses are basically doubled due to two new households. To argue that anyone should be guaranteed the same kind of lifestyle is impossible and ridiculous. Especially when the new family is not afforded that guarantee.

The new argument is the importance of guaranteeing the custodial parent support for their "in-kind contribution" or the intangible cost of just being a parent. Yet ignored is the non-custodial parent's obvious intangible cost for that same in-kind contribution to their new family.

The last insult is telling a noncustodial parent, who has just been told he must pay 27-47% of his taxed income to the custodial parent in the form a tax-free gift. Now the agencies want to include his much-needed extra income in figuring the support obligation, while his new family is all but ignored.

The second job and occasional allowable overtime, to many divorced parents paying child support, is the difference between making ends meet, feeding himself or feeding his new family. Don't keep these people in indentured enslavement by taking that income away from them too. Take it from a non-custodial parent who was there.

The Senate Judiciary committee in their wisdom has amended it from "excluding all or a portion of the income from a second job" to "excluding all or a portion of the income from employment beyond a regular forty-hour workweek", clarifying a lot of intent with this bill. The Committee overwhelmingly passed this 5 to 1, and the Senate on the floor 47 to 1. We ask for a "do-pass" on this bill.

Thank you, and I will try to answer any questions.

Daniel Biesheuvel

SB2373
House Human Services Committee
March 12, 2001

Chairman Price and members of the House Human Services Committee,
Good Morning, My name is Mark Hafner from Beulah and I am here today
to ask for your support on SB2373.

I am a non-custodial parent of two daughters, Kara age 15 and Deanna age
13 who now live in California with their mother. I am also remarried to
Denise and have 2 more children; Josten age 2-½ and Tori age 4 months. I
am a member of the R-Kids organization but more importantly a citizen of
North Dakota.

When I got divorced back in 1991 my previous wife Brenda and I agreed to
the details of our divorce with little help from lawyers. It was agreed that I
would pay \$600 in Child Support and would pay for all travel expenses to
and from North Dakota along with medical and life insurance policies and
other miscellaneous expenses. In 1998 I was notified that Brenda had
requested a review of my child support. I then contested the review on the
grounds that it did not take into account any of the other things that were
agreed to in the divorce. During this court hearing I provided evidence that I
was **guaranteed** to make **\$51,000** for the year of 1998, but with overtime for
the year I would end up somewhere in the **\$55000** area. At this time the
lawyer representing the Child Support Unit asked and I quote "Is the figure
of \$55000 just an estimate on your part and a number you just pulled out of
the sky"?

She then figured my income at **\$57853** using my last paycheck and
averaging it for the rest of the year. I have included pages 1 and 2 to show
the computations. My child support was then set at \$991 per month.

The problem with these figures was that all off my overtime had been cut
earlier in the year to zero. No overtime in my department or any other
Department.

I have enclosed a copy of my W-2 for 1998 and 1999 showing that I truly
did make **\$55000** for those 2 years. So who **estimated** a number and pulled
it out of the sky?

I work for the Coteau Properties Company, which is the coal mine
north of Beulah that provides coal to Dakota Gas Company and the Antelope
Valley station along with other smaller customers. I have worked there
almost 17 years and the last 10 of those years in what is called the Special
Projects Department. Our main job is taking care of all the power cable that
supplies power to 2 draglines and 3 loading shovels.

I am also responsible for a lot of all the other special needs of the mine, in all other departments on a regular basis. In my job I work a 40 hour week with 10 hour shifts spread over 4 days with alternating Mondays and Fridays off. I am **Guaranteed** to be paid for those 40 hours whether I am sick, on vacation, on family leave, holidays, or providing testimony at the legislature as I am today. I have also enclosed a letter from my employer that I used as evidence in court for you to read stating that Coteau does not guarantee overtime to its employees.

If this law would have been in effect in 1998 when my child support was set **for the next 3 years** it would have been set at about \$850. With my pay increases over the last 3 years and a base pay of \$54500 my child support would now be at \$850 a month.

Why would there be no change in the child support amount after the increase in my income? The changes in the guidelines that included the removal of the marriage penalty, the removal of spouses income and the fact that I now have another child to figure in would result in almost no change in my support amount.

In testimony before the Judiciary committee against SB2373 a representative of the Department said that this bill would have a minimal fiscal impact. My belief is that this bill would have a positive fiscal impact for this state. Why?

I believe that by removing overtime and second jobs from the system would result in fewer cases being brought up for review, by custodial parents looking for more money, which will in turn lighten the case overload for the child support units. This will then also free up much of the caseload in our courts brought when a person is not awarded that free review and the subsequent free legal services.

I have enclosed a copy of a request for a review that I did last summer and the reply I got denying my request. To get my child support dropped to the amount of \$850 which I should have been paying if based on my guaranteed wages I would have to hire a lawyer and take it into court where a judge may or may not drop it.

Didn't I just state that this bill would decrease the amount of caseloads in the court system?

The problem for me is this. If the proposed Tax plan of President Bush gets enacted, the increase in the child tax credit would increase my net income, which would put my child support only slightly less than what it is now. I will take the tax cut over the decrease.

There was some discussion about how this would affect the children if this law was passed and that this bill has been killed before in past years.

This bill is worded different in that it leaves that discretion, up to the judge in that case, to decide if the deviation to not include second jobs and overtime will be detrimental to the children.

Former bills have not included that language.

It is my view that if my child support were based on my guaranteed income and going from \$991 to \$850, it would not be detrimental to the well being of Kara and Deanna. But with what my support is set at now, the \$150 that I am overpaying effects the needs of the family I have now.

In my job my overtime is not guaranteed to be there and if overtime does come up I do not have to work it. With two young children at home, I do not plan on working hardly any overtime at all. But I will be paying child support as if I was.

Child support is an issue that affects my family everyday. Should I work overtime? Do I need to spend more time with my Kids? Can we afford a new car? This is not fair! Should I work overtime when Kara and Deanna are here for their visitation? Everyday we think about these issues.

Don't get me totally wrong! I care a lot about Kara and Deanna and their well being. I talk to them at the least, every 2 weeks and have never missed a support payment in 10 years. I am very proud of the both of them in that they are both straight A students, in classes with over 450 kids in each grade and both excel in their selected sport and all the other things they do.

I just want this system to be fair to both my families.

The bottom line that I would like to leave you with is this.

If I can show a GUARANTEED income based on my wages, which can be proved to no doubt, why should my child support be based on an ESTIMATED number which is pulled from the sky.

The Senate Judiciary committee placed a do pass recommendation on SB2373 on a 5-1 vote and passed it through the Senate on a 47-1 vote. I ask you now to also place a do pass recommendation on SB2373 and add more fairness to the Child Support system in the State of North Dakota. I will be glad to answer any Questions you may have.

Thank You

Mark Hafner

North Dakota, rather than California where the plaintiff and the children have resided for the past seven years or so.

Hearing was held on October 27, 1998. The plaintiff was present and represented by Anne Summers and Rhonda Pierce. The defendant was present and represented by Ben Pulkrabek.

PLAINTIFF'S MOTION FOR INCREASED CHILD SUPPORT

The defendant has resisted the motion for increased child support on the grounds that the parties stipulated and agreed at the time of the divorce that his support payments would be \$600 per month. The Court received testimony indicating that the defendant is a career employee with the Coteau Mining Company of Beulah, North Dakota. The evidence indicated that his 1998 gross income will be at or near \$57,853. The Court will attach as an exhibit to this Memorandum the computations compiled by Ms. Pierce of the Regional Child Support Enforcement Unit. While the defendant's obligation under the guidelines would exceed \$1,000 per month for two children, this Court concludes that he should be entitled to a downward deviation due to the travel costs which he has assumed in order to bring the children back to North Dakota for summer visitation. This obligation was incorporated into the divorce judgment and decree, and the Court concludes that this expense should continue to be paid by the defendant. However, because it was the plaintiff's decision to leave the state with the children, the Court concludes that an offset against the increased child support amount is justifiable.

Accordingly, child support will be ordered in the amount of \$991 per month effective January 1999.

CUSTODY AND VISITATION

The plaintiff has requested that this Court decline any consideration of custody or visitation matters on grounds that the Court no longer has jurisdiction in

CHILD SUPPORT GUIDELINES
(N.D.A.C. ch. 75-02-04.1)

\$45,615.46 / 41 wks
\$1112.57 x 52 wks

Worksheet

ABSENT PARENT/OBLIGOR: Mark Hafner
CUSTODIAL PARENT/OBLIGEE: Brenda Bonner

\$57,853.64
-\$ 3,450.00
-\$ 2,650.00
-\$ 2,650.00
-\$ 1,325.00
-\$ 2,650.00

Gross Annual Employment Income \$57,853.64 \$45,128.64
(Actual or Imputed from Schedule A)

Less:

Federal Income Tax-01(7)(a)	<u>\$7279.00</u>	
State Income Tax-01(7)(b)	<u>\$1019.00</u>	
FICA/Medicare-01(7)(c)	<u>\$4426.00</u>	
Health Ins. For Children-01(7)(d)	<u>\$ 114.00</u>	(11/5=2.2 x 2 children=
((total premium+#covered)X # children)		4.4 x 26wks)
Other Med. Exp. For Children-01(7)(e)	_____	
Required Union Dues-01(7)(f)	_____	
Required Retirement Contrib.-01(7)(g)	_____	
Other Employee Exp-01(7)(h)	<u>\$1200.00</u>	(\$600.00/ch/yr) Visitation
Total Deductions	<u>\$14,038.00</u>	Travel
Net Annual Employment Income		<u>\$43,815.64</u>

Annual Self-Employment Income (Sched.B)

Less:

Federal Income Tax-01(7)(a)	_____
State Income Tax-01(7)(b)	_____
FICA/Medicare-01(7)(c)	_____
Health Ins. For Children-01(7)(d)	_____
((total premium+#covered)X # children)	
Other Med. Exp. For Children-01(7)(e)	_____
Required Union Dues-01(7)(f)	_____
Required Retirement Contrib.-01(7)(g)	_____
Total Deductions	_____
Net Annual Self Employment Income	_____

Other Annual Gross Income:

Children's Benefits-01(3)&(5)	_____
In-Kind Income-01(6)	_____
Military Subsistence-01(5)	_____
Spousal Support-01(5)	_____
Unemp./W. Comp. Benefits-01(5)	_____
Pension/Vets/Ret. Income-01(5)	_____
Income of Spouse-08	_____
Other	_____
Total Other Gross Income	_____

CHILD SUPPORT GUIDELINES

SCHEDULE E - MULTIPLE FAMILIES (BOTH PARENTS) (N.D.A.C. 75-02-04.1-06(2))

NON-CUSTODIAL PARENT/OBLIGOR: Mark Hafner

CUSTODIAL PARENT/OBLIGEE: Brenda Bonner

This schedule is for use in determining the deduction from the obligor's net income for the cost of supporting a child living with the obligor when that child's other parent also lives with the obligor. This amount is carried to Schedule C, line 1.

1.	Obligor's net monthly income	<u>\$3651.30</u>
2.	Monthly net income of other parent of child living with obligor* (75-02-04.1-06(2)(a))	<u>\$851.88</u>
3.	Combined net income	<u>\$4503.18</u>
4.	Total (unduplicated) number of children to whom the obligor and the other parent owe a duty of support	<u>3</u>
5.	Apply lines 3 and 4 to guidelines	<u>\$1538.00</u>
6.	Divide line 5 by line 4 (75-02-04.1-06(2)(b))	<u>\$512.67</u>
7.	Multiply line 6 by total number of children living with the obligor to whom the obligor owes a duty of support and whose other parent lives with the obligor (75-02-04.1-06(2)(c))	<u>\$512.67</u>
8.	Divide line 1 by line 3	<u>.81</u>
9.	Multiply line 8 by line 7	<u>\$415.26</u>

Line 9 is the deduction from the obligor's net income for the cost of supporting a child or children living with the obligor whose other parent lives with the obligor.

NOTE: Both Schedule D and E will be used in cases where the obligor has children in the obligor's household to whom a duty of support is owed and the other parent in the household is not the parent of all the obligor's children in the obligor's household.

Use worksheet to determine net income of other parent.

June 1995

CHILD SUPPORT GUIDELINES

SCHEDULE C - MULTIPLE ORDERS (N.D.A.C. 75-02-04.1-06.1)

NON-CUSTODIAL PARENT/OBLIGOR: Mark Hafner
CUSTODIAL PARENT/OBLIGEE: Brenda Bonner

This schedule is for use in determining the support amount where the obligor owes duties of support payable to two or more obligees, or owes a duty of support to a child living with the obligor who is not also the child of the obligee and also owes a duty of support payable to at least one obligee.

Obligor's Net Monthly Income (From Worksheet)..... \$3651.30

	Children Living With The Obligor	Obligee A	Obligee B	Obligee C
1. Support Amount* -06.1(03)	<u>\$415.26</u>	<u>\$1061</u> (\$685)	_____	_____
2. Obligor's net income reduced by <u>other</u> obligations from line 1 -06.1(04)(a)		<u>\$3236.04</u>	_____	_____
3. Support Amount** -06.1(04)		<u>\$920</u> (\$604)	_____	_____
4. Line 1 + Line 3		<u>\$1981</u> (\$1281)	_____	_____
5. Support Amount (Line 4 + 2)		<u>\$991 for two children</u> (\$645) for one child	_____	_____

* A hypothetical child support amount based on §75-02-04.1-06 for children living with the obligor, who are not also children of the obligee, and based on application of the guidelines to the obligor's net income to determine each obligation assuming no other obligation. (From Schedules D or E)

** A hypothetical child support amount based on application of the guidelines to obligor's net income reduced by those hypothetical support obligations, determined on line 1, for all other obligees and children living with the obligor.

Note: The allowance for children living with the obligor is not used if the children in the obligor's home are also children of the obligee, such as in split custody situations.

December 1995

a Control number 11686		OMB No. 1545-0008					
		Copy C For EMPLOYEE'S RECORDS (See Notice to Employee on back of Copy B.)					
b Employer identification number 34-1105141		1 Wages, tips, other compensation 52764.76		2 Federal income tax withheld 5084.76			
c Employer's name, address, and ZIP code THE COTEAU PROPERTIES COMPANY 14785 PRESTON ROAD SUITE 1100 DALLAS TX 75240-7891		3 Social security wages 54891.17		4 Social security tax withheld 740.17			
		5 Medicare wages and tips 54892.17		6 Medicare tax withheld 791.17			
		7 Social security tips		8 Allocated tips			
d Employee's social security number 502-78-6752		9 Advance EIC payment		10 Dependent care benefits			
e Employee's name, address, and ZIP code MARK N HAFNER 5840 4TH STREET NW BEULAH ND 58523		11 Nonqualified plans		12 Benefits included in box 11			
		13 See instrs for box 13 C 65.12 D 2022.41		14 Other			
		15 Statutory employee		Deceased		Pension plan	
16 State Employer's state I.D. no. ND 34110514101		17 State wages, tips, etc. 52764.76		18 State income tax 713.17		19 Locality name	
						20 Local wages, tips, etc.	
						21 Local income tax	

Form **W-2** Wage and Tax Statement **1998**

Department of the Treasury - Internal Revenue Service

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

OMB No. 1545-0008 Form **W-2** Wage and Tax Statement **1999**

7 Social security tips	1 Wages, tips, other compensation 55568.77	2 Federal income tax withheld 4559.26
8 Allocated tips	3 Social security wages 55568.77	4 Social security tax withheld 3445.26
9 Advance EIC payment	5 Medicare wages and tips 55568.77	6 Medicare tax withheld 805.75

c Employer's name, address, and ZIP code
**THE COTEAU PROPERTIES COMPANY
14785 PRESTON ROAD SUITE 1100
DALLAS TX 75240-7891**

10 Dependent care benefits	11 Nonqualified plans	12 Benefits included in box 11
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b Employer identification number 34-1105141	d Employee's social security number 502-78-6752
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13
C **138.76**

15 Statutory employee	Deceased	Pension plan	Legal rep		Deferred compensation	Vol 1
		X				

e Employee's name, address, and ZIP code
**MARK N HAFNER
5840 4TH STREET NW
BEULAH ND 58523**

16 Name of state ND	Employer's state I.D. no. 34110514101	
17 State wages, tips, etc. 55568.77	18 State income tax 641.46	
19 Locality name	20 Local wages, tips, etc.	21 Local income tax

Copy 2 For Employee's
State, City or Local
Income Tax Return

Dept. of the Treasury - IRS



THE
COTEAU PROPERTIES
COMPANY

A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION

204 COUNTY ROAD 15
BEULAH, NORTH DAKOTA 58523
(701) 873-2281

February 24, 1999

To Whom It May Concern:

Mark Hafner, an employee of The Coteau Properties Company, has asked that I write a statement in respect to Coteau's overtime practices.

Mark's overtime earnings have dropped significantly over the past year. It is Coteau's intention to continue in this trend to reduce overtime in all departments. We do not anticipate any problems in reducing overtime; however, this goal could change depending on mining conditions.

Sincerely

Janice L. Hawkey
Human Resource Specialist

NOTICE OF RIGHT TO REQUEST REVIEW

In the matter of:

Brenda Bonner, Plaintiff

vs.

Mark Hapner, Defendant

3-13-99

Your child support court order is being monitored and/or enforced by the North Dakota Child Support Enforcement Agency. This is your notice that you have the right to request us to conduct a review of your child support order, at any time.

We may deny your request if it has been less than thirty-five (35) months since your court order was established or last reviewed. We may also deny your request if less than six (6) months remains on the child support order. In addition, we may not be able to conduct a review if your order is from another state and cannot be adjusted in North Dakota.

If a review is conducted, we will gather financial information and apply it to the North Dakota Child Support guidelines to determine if the amount of child support is correct. If the amount of child support is not correct according to the guidelines, we will seek to adjust the amount of child support. This adjustment may either be an increase or a decrease of the amount. If both parties do not agree to the adjustment, we may seek an adjustment through the court. Once the review has begun, it will not be stopped if we began the review due to the receipt of public assistance by the family. If one of the parties requested the review or the family is no longer receiving public assistance, the review may be stopped if: 1. both parties request in writing for it to be stopped, or 2. the entire case with us is closed by the party who applied for our services. If we receive a request for the case to be closed, the other party will be given the opportunity to apply for our services, thereby continuing the review.

When conducting a review, we will also determine if health insurance coverage for the child(ren) is addressed in your court order. If it is not, we may seek to adjust your order to include the coverage.

If you have any questions or need more information, you may call us at (701)222-6721.

If you wish to request a review, you must do so by writing to us at the following address. When requesting a review, please include your name and social security number as well as the other party's name and social security number.

Bismarck Regional Child Support Enforcement Unit
P.O. Box 5518
Bismarck, ND 58506-5518

August 28, 2000

Bismarck Regional Child Support Enforcement Unit
P.O. Box 5518
Bismarck, ND 58506-5518

Mark Hafner
5840 4th St. NW
Beulah, ND 58523

Child Support Review
Mark Hafner
502-78-6752
Brenda Bonner
502-04-7773

I would like to request that a review be conducted of the child support order in this case.
I am making this request for the following reasons.

1. My wife is expecting our second child to be born November 10, 2000.
2. My wife will not be working after this baby is born.
3. My income for 1998 and 1999 is substantially less than the amount **estimated** by the CSEU for my 1998 income in the last order.
4. My medical insurance premium rose in 2000.

Thank you,

Mark Hafner

Regional Child Support Enforcement Unit

Burleigh • Emmons • Grant • Kidder • McLean • Mercer • Morton • Oliver • Sheridan • Sioux

In Association With
Burleigh County State's Attorney

RICHARD J. RIHA
State's Attorney

Courthouse
P.O. Box 5518 • Bismarck, ND 58506
(701) 222-6721
FAX # (701) 222-6751

HEIDI M. AHL-QUANBECK
Administrator

September 13, 2000

Mark Hafner
5840 4th St NW
Beulah, ND 58523

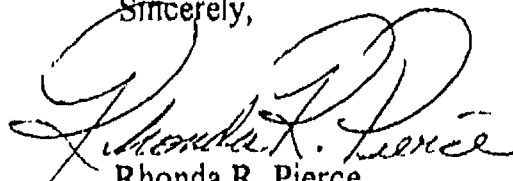
Dear Mr. Hafner:

This is in response to your request for a review of your child support obligation. As you probably know, my office is required to review your child support obligation at least once every 36 months. However, due to our large caseload, we are unable to accommodate every request if it has been less than 35 months since the order was established or last reviewed.

It appears that your court order was modified in March, 1999. Since your court order is not yet "old enough", we must regretfully deny your request for review at this time.

Feel free to contact the Regional Child Support Enforcement Unit at 222-6721 if you have any questions.

Sincerely,



Rhonda R. Pierce
Staff Attorney

RRP/gd

**TESTIMONY ON SB 2373, BEFORE THE HOUSE HUMAN SERVICES
COMMITTEE**

March 12, 2001, 10:30 a.m.

Lloyd C. Suhr
Staff Attorney, Bismarck Regional Child Support Enforcement Unit

Chairman Price, members of the House Human Services Committee, my name is Lloyd Suhr and I am a staff attorney with the Bismarck Regional Child Support Enforcement Unit. I am here to ask that this committee make a recommendation of "Do Not Pass" with regard to SB 2373.

In reviewing this bill, I asked myself two fundamental questions: 1) Do I agree with what this bill says substantively?; and 2) Is this bill clearly written? The answer to each of these questions is "No."

Substantively, SB 2373 poses five primary problems. First, it would allow obligors who work more than one job to be treated differently than obligors who work only one job, even if their overall incomes were the same. As an example: suppose obligor #1 works 32 hours a week, Monday through Thursday, as a retail salesperson and 12 hours per week, Friday and Saturday, as a bartender, and earns \$22,000/year gross. Obligor #2 works 40 hours per week as a retail salesperson, and he also earns \$22,000/year gross. Under SB 2373, even though both obligors earn the same income, obligor #1 has an advantage because he could ask that his bartending income be excluded for purposes of determining gross income for calculating child support. Whether this different treatment rises to the level of violating the Equal Protection clause of the Fourteenth Amendment is unclear, but is certainly a possibility.

Secondly, SB 2373 treats children differently as well. In my previous example, the child of obligor #1 receives less child support than the child of obligor #2 simply because part of the income at issue stems from a second job. Ultimately, this committee should remember that child support is not about the parents who pay or receive it, the attorneys who argue and judges who decide child support cases, or the legislature who passes child support statutes. It is about the children who receive it.

Third, SB 2373 contradicts public policy which says that if an obligor enjoys financial gain, the child should be entitled to share in the advantages of that financial gain as well. Under SB 2373, an obligor could enjoy the increased income generated by a second job or overtime while the child may not, as that

income could be excluded for purposes of child support.

Fourth, SB 2373 contradicts the general rule recognized by the North Dakota Supreme Court that in determining an obligor's income for purposes of calculating child support, their earning capacity is relevant. SB 2373 would, in its application, disregard the earning capacity of a person to the extent that ability to earn is derivative of a "second or subsequent job" or "irregular overtime income".

Last, SB 2373 promotes litigation. Factual findings would need to be made by a referee or judge as to whether or not deducting the relevant income would be detrimental to the child and whether the obligor's employment has been changed for the purpose of affecting a support order. Increased litigation in turn means increased costs to state and political subdivisions as more time is needed from our judges and referees, child support attorneys, and the court system in general.

With regard to the clarity of SB 2372, there is a couple of key terms which are extremely relevant to the application of the bill, but lack any definition. First, the term "subsequent jobs". Does this mean two jobs being worked at the same time? Does it mean the second, third, or fourth job held by an obligor during a year even if not held at the same time? This is not clear. The second term is "irregular overtime". Does this mean overtime above and beyond a certain number of hours of overtime? Does this mean overtime stemming from special duties not normally carried out as a part of the obligor's regular job responsibilities?

SB 2373 lacks substantive fairness, contradicts public policy, and lacks clarity. I would strongly recommend that this committee recommend a "Do Not Pass" with regard to SB 2373. At this time I would be happy to try and answer any questions the committee would have.

**TESTIMONY BEFORE THE
HOUSE HUMAN SERVICES COMMITTEE
REGARDING ENGROSSED SB NO. 2373
MARCH 12, 2001**

Chairman Price and members of the House Human Services Committee, my name is Paulette Oberst. I am an Assistant Policy Administrator with the Child Support Enforcement division within the Department of Human Services. The Department has grave concerns regarding SB 2373.

Child support amounts determined by application of the guidelines are presumed to be the correct amount of child support. There are some areas in which the court has discretion to deviate from the guideline amount if such deviation is in the best interests of the child. These areas are defined in the guidelines as criteria for rebuttal of the guideline amount. (N.D. Admin. Code 75-02-04.1-09)

Income from an obligor's second job and income from overtime wages would ordinarily be included in gross income to be considered in determining the guideline amount. Engrossed SB 2373 provides that income from a second or subsequent job and income from overtime may be deducted from gross income upon a showing of specific circumstances. These are determinations for the court to make. Therefore, we believe that the bill would establish another potential basis whereby the court could deviate from the guideline amount.

The guidelines are based on the principle that, to the extent possible, children are afforded the same financial circumstances they would receive if they lived with both parents. Children who live with both parents receive direct or indirect financial benefits when a parent works a second job or overtime. Contrary to this principle, SB 2373 is based on the idea that an obligor who works a second job or overtime may be entitled to keep those financial benefits from the children. This approach is harmful to children, especially children at lower income levels, as it means that desperately needed support could be lost. For these children, child support is a critical factor in meeting their needs.

North Dakota's guidelines are among the lowest in the nation. The affect of this bill would be to lower child support obligations even further for some of North Dakota's poorest people.

Currently, the guidelines define gross income as income from any source, in any form, with very few exceptions. (N.D. Admin. Code 75-02-04.1-01(5)(a)) This broad definition of gross income is illustrative of another principle on which the guidelines are based, namely, that all income, regardless of the source, should be considered in determining support. To allow any employment-related income to be deducted from gross income would be a major departure from this principle. If income is available to the obligor with which to pay child support, it should not be deducted from gross income. In addition, even though income from a second job or overtime is included in gross income, only a portion of that second job or overtime income is actually paid out as child support. The remainder may be used by the obligor as the obligor deems appropriate.

The guidelines provide that calculations will ordinarily be based on recent past circumstances. However, if circumstances that materially affect the support obligation are very likely to change in the near future, the court may instead give consideration to the likely future circumstances. Therefore, the court has discretion under the current guidelines not to consider past second job or overtime income if it is very likely that such income will not be available in the near future.

During the hearing on this bill before the Senate Judiciary Committee, proponents testified that obligors take on second jobs or work overtime in order to provide for their "new" families. However, since 1995, the guidelines have recognized the obligor's duty to support the "new" family. The guidelines already provide an adjustment for the costs of supporting other children of the obligor. (N.D. Admin. Code 75-02-04.1-06 and -06.1) If this bill passes, children from the "new" family would benefit from the obligor's working a second job or overtime but children for whom support is owed would not benefit. The effect would be to give preference to the "new" family at the expense of children for whom support is owed.

In addition to negative effects on children, SB 2373 has major practical flaws including significant ambiguity resulting in uncertainty and the creation of costly issues of proof.

With respect to second jobs, there is no provision for distinguishing between primary and secondary jobs. For example, if an individual has two jobs, one involving 25 hours of work per week and one involving 20 hours of work per week, it is not clear which would be considered the "second job." Furthermore, it is not clear whether the court could deduct income from the five hours in excess of 40 or income from the entire "second job," assuming the "second job" could be identified. Even if the court only deducted five hours of work, it is still unclear which job is the second job if the jobs pay different hourly wages. The bill provides no direction regarding whether the primary and secondary jobs are determined by the relative rates of pay, the relative number of hours worked, or the order in which the jobs were obtained.

There is no requirement that the second job, assuming it can be identified, be compensable at an hourly wage rate. If an individual has multiple jobs and receives tips in addition to an hourly wage from one of the jobs, it would not be possible to determine whether those tips were earned during the total 40-hour work period or outside of that period. A similar problem exists with respect to commission or bonus income.

Language in the bill regarding "subsequent" jobs is also unclear. For example, for an individual who has a part-time job and then obtains a full-time job but retains the part-time job as well, if the full-time job is considered the "subsequent" job the court could disregard the income from the full-time job and set the child support obligation based only on the income from the part-time job.

With respect to overtime income, the bill does not define "irregular" overtime. For example, overtime may be available on a continuum from once per week to once per year. The bill provides no direction on when overtime changes from "regular" to "irregular" or vice versa. The court will need to turn to employers to make the necessary factual determination regarding whether overtime is "irregular." This will create a burden on employers who may be asked to provide affidavits or who may be subpoenaed to testify in court regarding availability of overtime.

These examples illustrate the uncertainty which would result if the provisions in this bill are applied to actual child support cases. Such uncertainty may result in

additional litigation which, in turn, causes delays and drives up the cost of making child support determinations.

There is a potential proof problem with respect to the requirement for the total employment to exceed a 40-hour work week. For example, an individual whose compensation is based on a sales or production quota, instead of on the number of hours worked per week, may find it difficult to prove that he or she worked the requisite number of hours or which of the hours worked actually produced income. Such proof problems may cause delays and drive up the cost of making child support determinations because, in addition to the costs associated with litigation, there would also be costs associated with more extensive discovery.

The bill contains language which would allow the court to deduct income from second or subsequent jobs or from irregular overtime if, among other things, to do so is "not detrimental" to the child. This language is inconsistent with the principle found in federal regulations, state law, and the guidelines that a deviation from the guideline amount must consider the "best interests" of the child. Something which is "not detrimental" to the child is not necessarily in the "best interests" of the child. The "not detrimental" language provides a different, and we believe a lower, standard than the "best interests" language. When considering a deviation from the guideline amount, we believe it is appropriate to use the higher standard.

We are unable to see how language in SB 2373 would mesh with existing language added by the 1999 Legislative Assembly relating to employee benefits. The bill would amend N.D.C.C. 14-09-09.7(1)(a) but does not reflect existing language in the statute to be amended.

During the 1999 legislative session, the Legislative Assembly considered and rejected HB 1029 which would have permitted income from overtime and second jobs to be deducted from gross income in certain situations. Much of the language in HB 1029 was similar to language in the current bill.

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

My name is Mark Fiechtner, the proud father of an 8yr. old and a 10yr. old. I have lived in Bismarck all my life and am a new member of R-KIDS.

I am in favor of SB2373 because it is in the best interest of our children of today and tomorrow.

I myself have income variations of \$10,000.00 from one year to the next. My first year at Melroe was \$47,000.00 then \$35,000.00 then \$39,000.00 and this last year was \$45,000.00. My supervisor came to us a couple weeks ago and said, no more overtime till at least June, maybe longer. We have been told by the CEO that business projections of a slump to last till at least the end of 2002. That means no OT or maybe very little. Nothing you could bank on. Now the rumors of maybe even a lay-off. Then there are the people who work seasonal jobs, I don't know how they do it. I did for years and it was tough to make it and I wasn't divorced then.

Now I have child support payments of near \$700.00 per month. I have my children 5 days a week, Mon-Fri. plus one weekend a month totaling 22 days. So I am the one that gets them to the afterschool activities like basketball, football, baseball, swimming, Scouts, and CCD. Not to mention that I have been paying for most of them out of my pocket plus the gas and the meals. I don't get any compensation for those plus I am trying to put some money away for college for them. God knows she is not.

It was not my choice to get a divorce or to have the near \$35,000.00 in legal fees to get divorced and lose custody of the ones I love and work for.

Our OT which is in no way guaranteed or on any schedule is what guys and WOMEN like me use to pay for those things for our children and save for their college. Because the laws don't clearly state what the child support is to be used for, people like me will go above and beyond to see that the children do have somewhat of a "lifestyle" like they had before. And yes, some of the OT and second job income is also used for us to get ahead, so maybe, just maybe I could afford a newer that 20yr. old car with 200,000 miles on it. After all last time I checked, I thought I was still a human being. So why do we feel we are not. Are we criminals because we love and care for our children and do want to pay child support, but just want to live a somewhat normal life with our loved ones when we can?

Many of us are dedicated to our children and to better our lives as well so we can spend quality time in a quality home when we can see our children. Any or them work for the same company I do, male and female, alike, I know of both. We are not deadbeats.

The child support guidelines in my opinion are in desperate need of changes. They seem to really want to get that extra \$3.50 for every dollar they collect from us to

put toward their Welfare Program, instead of allowing us the opportunity to better ourselves, and most important the children we love and are dedicated to. Vote yes to SB2373.

Mark Fiechtner
614 W Rosser Ave.
Bismarck, ND 58501

701-255-6357
mlmfiechtner@cs.com