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ROLL NUMBER

DESCRIPTION

2246

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Deanna D. Smith
Operator's Signature

10/21/03
Date

2003 SENATE HUMAN SERVICES

SB 2246

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10/21/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246

Senate Human Services Committee

☐ Conference Committee

Hearing Date January 27, 2003

Tape Number	Side A	Side B	Meter #
1	X		4671 - end
		X	0 - 2199
Committee Clerk Signature <i>Donna Kramer</i>			

Minutes:

Vice Chairman Senator Brown called the public hearing to order for SB 2246 relating to notice of child support arrears, duties and responsibilities of a child support income payer, and judgment interest for past-due child support.

SENATOR FISCHER introduced the bill testifying as a sponsor. This bill was a result of a hearing of some constituents with a troubling problem as child support obligors having money withheld from their paychecks to pay their child support obligations. But their employers kept the money and failed to turn it over to the state for disbursement to the family. They contacted the department and learned that employers currently have seven (7) business days after the money is withheld to send the money into the department. Until the money is paid to the department, the child support obligation is not satisfied and the obligor is technically in arrears. Not only is this unfair to the families waiting for the child support payment, but it is also unfair to the obligors who have had their payment taken out of their wages. Particularly since the

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Page 2
Senate Human Services Committee
Bill/Resolution Number SB 2246
Hearing Date January 27, 2003

obligor can be reported to credit bureaus, held in contempt and required to pay judgment interest on the past due support, even though they have had it taken out of their check.

In contacting the Child Support State Enforcement office, I was surprised to learn that over 185 million dollars is owed in past due child support in North Dakota. I think the legislature is a policy making branch of government that needs to look at ways to improve the collection of child support arrears. (Meter #4829 - 5330)

JAMES FLEMING, Deputy Director and General Counsel of the State Child Support Enforcement Office of the Department of Human Services, testified to provide information.

(Copy of written testimony attached) Under Section One, an amendment is "The clerk of court may delay sending a notice of arrears or request for a citation for contempt of court under this section if a notice has been mailed to the obligor under section 6 of this Act." An "Order to Show Cause" proceeding would not have to be scheduled in all these cases unless the license suspension process was completed and the obligor still not pay the required monthly child support amount

Section Two of the bill would improve the information we obtain about obligors who move from job to job.

Under Section Three, an employer who still hasn't paid after 14 working days is subject to the additional contempt sanction of \$500 in damages or actual damages, whichever is greater.

Section Four authorizes a late fee of \$25 per day per obligor or \$75 per day, whichever is greater, for each additional business day (after the 7 working days the employer has to turn over the withheld money) that a payment is delinquent. (Tape 1, Side A, Meter #5460 - end and Tape 1, Side B, 0 -)

Page 3

Senate Human Services Committee

Bill/Resolution Number SB 2246

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Section Five: Under legislation that was passed by the 2001 Legislative Assembly, we have now begun including interest in our records for arrears that first become due and unpaid after July 1, 2002. Section five would take the next step and authorize us to account for judgment interest on pre-July 1, 2002, arrears on a prospective basis.

Section Six: The definition of "license" in section six expands on current law by including vehicle registrations. An obligor who drives with a suspended license is difficult to catch unless the obligor is stopped for an offense. However, vehicle registrations are generally displayed on the exterior of the vehicle and are easy to identify if they are outdated. If the bill is passed, we would not envision law enforcement officers physically removing license plates or registrations from vehicles, but the registration would nevertheless be considered suspended and would not be renewed. New licenses and registrations for an obligor may be withheld as well.

SENATOR LEE: Questioned whether the statute currently in place says 12% annual or 1% monthly? (Meter # 728 - 980)

(Tape 1, Side A, Meter #5460 - end and Tape 1, Side B, 0 -1965)

SENATOR FAIRFIELD: Question on Section 6, Page 5, Line 5, about obligor who is in arrears ... is that a standard used? (Meter # 1975 - 2150)

Public Hearing on SB 2246 closed. (Meter # 2199)

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
1	X		350 - 1300
Committee Clerk Signature <i>Donna Krames</i>			

Minutes:

SENATOR JUDY LEE opened the committee discussion on SB 2246 relating to notice of child support arrears, duties and responsibilities of a child support income payer and judgment interest for past-due child support. (Meter # 350)

Roll call had been read.

Discussion on the bill being a tool that can be used in collecting child support arrears. Reference to wanted posters, pictures on internet, suspension of driver's licenses, notification of arrears, and the fiscal note. (Meter #536 - 1155)

SENATOR FISCHER made a motion to Do Pass and rerefer to Appropriations.

SENATOR POLOVITZ seconded the motion.

Roll call was read. 4 yeas 1 nay and 1 absent.

SENATOR FISCHER will be the carrier. (Meter # 1300)

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10/21/03
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FISCAL NOTE
Requested by Legislative Council
03/18/2003

Amendment to: SB 2246

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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$174,900		
Expenditures			\$90,100	\$174,900		
Appropriations			\$90,100	\$174,900		

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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 implement a process for suspending occupational, recreational, drivers' and vehicle licenses or registrations for failure to pay child support. The bill increases the information the child support enforcement agency may obtain from employers regarding former employees and authorizes additional sanctions against employers who are delinquent in providing income withheld by the employer under an income withholding order. It would also authorize the Fully Automated Child Support Enforcement System (FACSES) to account for judgment interest on pre-July 1, 2002 arrears on a prospective basis beginning with January 2004. The license suspension and judgment interest sections would increase child support collections which would result in a decrease in general funds needed. The increase in collections is unknown. Costs would be incurred by the Department of Human Services for programming changes to FACSES and for postage to mail interest notices. The judiciary, clerks of court and some states attorneys will have a cost savings due to a reduction of contempt proceedings. The costs savings for this reduction is unknown.

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

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

The Department of Human Services would receive federal funds of \$174,900 for the 03-05 biennium which is 66% of the expenditures incurred.

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

The Department of Human Services would incur costs in the 03-05 biennium for programming FACSES; \$150,000 to implement the license suspension process and \$100,000 for judgment interest. Costs of \$15,000 would also be incurred to mail information notices about the judgment interest.

The judiciary, clerks of court, and some states attorneys would experience a reduction of expenditures due to a reduction in the number of contempt proceedings. The amount of the costs savings from this reduction is unknown.

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*

[Signature]
Operator's Signature

10/21/03
Date

budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

The Department of Human Services would need additional appropriation authority of \$265,000 for the 03-05 biennium; \$90,100 of general funds and \$174,900 of other funds.

Name:	Brenda M. Welsz	Agency:	Dept. of Human Services
Phone Number:	328-2397	Date Prepared:	03/18/2003

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Diana M. Hall
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10/21/03
Date

FISCAL NOTE
Requested by Legislative Council
01/20/2003

Bill/Resolution No.: SB 2246

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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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2001-2003 Biennium			2003-2005 Biennium			2005-2007 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 implement a process for suspending occupational, recreational, drivers' and vehicle licenses or registrations for failure to pay child support. The bill increases the information the child support enforcement agency may obtain from employers regarding former employees and authorizes additional sanctions against employers who are delinquent in providing income withheld by the employer under an income withholding order. It would also authorize the Fully Automated Child Support Enforcement System (FACSES) to account for judgment interest on pre-July 1, 2002 arrears on a prospective basis beginning with January 2004. The license suspension and judgment interest sections would increase child support collections which would result in a decrease in general funds needed. The increase in collections is unknown. Costs would be incurred by the Department of Human Services for programming changes to FACSES and for postage to mail interest notices. The judiciary, clerks of court and some states attorneys will have a cost savings due to a reduction of contempt proceedings. The costs savings for this reduction is unknown.

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number of contempt proceedings. The amount of the costs savings from this reduction is unknown.

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

The Department of Human Services would need additional appropriation authority of \$265,000 for the 03-05 biennium; \$90,100 of general funds and \$174,900 of other funds.

Name:	Brenda M. Welsz	Agency:	Human Services
Phone Number:	328-2397	Date Prepared:	01/23/2003

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Dennis O. Welsz
Operator's Signature

10/21/03
Date

Date: 02-05-03
Roll Call Vote #: 02-05-01

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2246

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

"Do Pass" and re refer

Motion Made By

Sen. Fischer

Seconded By

Sen. Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele					
Senator Tom Fischer	✓				
Senator April Fairfield		✓			
Senator Michael Polovitz	✓				

Total (Yes) 4 No 1

Absent 1

Floor Assignment

Sen. Fischer

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

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Dennis D. Hall

Date

10/21/03

REPORT OF STANDING COMMITTEE (410)
February 5, 2003 1:17 p.m.

Module No: SR-22-1725
Carrier: Fischer
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2246: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2246 was rereferred to the Appropriations Committee.

2003 SENATE APPROPRIATIONS

SD 2246

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Operator's Signature

10/21/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2246

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 2-10-03

Tape Number	Side A	Side B	Meter #
3	X		1608-5230
Committee Clerk Signature <i>[Signature]</i>			

Minutes: Chairman Holmberg opened the hearing to SB 2246. A bill relating to late fees charged to a child support income payer and the withholding, restriction or suspension of licenses, permits and registration for failure to pay child support or comply with a subpoena; to notice of child support arrears, duties and responsibilities of a child support income payer and judgment interest for past-due child support.

Senator Tom Fischer (mtr #1706) - Introduced the bill and explained the impact regarding uncollected child support. For the details and fiscal impact, I will defer to a member of the Child Support Enforcement Unit. Urges support of this bill.

Senator Bowman (mtr #1790) - The appropriation expenditure on the fiscal note, what assurance do we have of collecting the uncollected portion of child support.

Senator Fischer (mtr #1836) - The tools in the bill are relatively stiff and will bring people to the table. Will bring people into compliance with court orders. Some funds will go into the general fund because it has been paid out in the form of benefits.

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10/21/03
Date

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Senate Appropriations Committee

Bill/Resolution Number SB2246

Hearing Date February 10, 2003

Senator Bowinan (mtr #2034) - If a person lose their license and can't work, will they end up in prison, where the state will support them.

Senator Fischer (mtr #2070) - Doesn't feel it will get to that point.

Senator Schobinger (mtr #2106) - How do we fix the problem of the person leaving the state when their license has been pulled.

Senator Fischer (mtr #2139) - Feels that improvements have been made in working with other states to identify these people.

Senator Bowman (mtr #2195) - Is there a provision in the bill that takes into consideration that a non custodial parent may be taking care of someone else's child. They may be indirectly reimbursing the state.

Senator Fischer (mtr #2285) - If a remarriage happens and inherit child, there should be child support coming for those children. This is only one portion of the child support law.

Senator Andrist (mtr #2472) - Hunting and fishing license's have already been revoked in some instances.

Senator Fischer (mtr #2500) - Agreed that revoking recreational license's is already in place.

Jim Flemming, Deputy Director and Attorney for the Child Support Enforcement Division of Human Services (mtr #2590) - Spoke on section 5 which is the major portion of the fiscal note.

Senator Robinson (mtr #2870) - Several questions, how old are some of these debts? What are the expectations for collecting the debts? How many debtors are out of state?

Mr. Flemming (mtr #2921) - Does not have the data available to answer all the questions, however child support judgments exist until it is paid.

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Date

Page 3

Senate Appropriations Committee

Bill/Resolution Number SB2246

Hearing Date February 10, 2003

Senator Bowman (mtr #3322) - How does the court look at a situation where a non-custodial parent remarries and supports a child in that marriage while having an obligation to a child from a previous marriage.

Mr. Flemming (mtr #3513) - The law is based on the parents legal obligation. Even though we would admire a parent providing support to a child in a second marriage, we worry about what the legal obligations are. There are opportunities to depart from the guidelines based on ability. This bill is not a debtors prison bill.

Senator Thane (mtr #3772) - What authority does the state have to take away a federal license.

Mr. Flemming (mtr #3799) - This bill does not apply to federally issued licenses. Language is included because there may have been a state issued license for aircraft.

Senator Andrist (mtr #4008) - Any flexibility's if obligor can not make payments.

Mr. Flemming (mtr #4109) - If obligor experiences a reduction in income, they can have their income and obligation reviewed. Further explanation on how the system works to help obligors that fall on hard times.

Senator Christmann (mtr #4483) - May be taking jobs away by taking their license away. Are there times when Child Support is wrong.

Mr. Flemming (mtr #4549) - This bill has a protest procedure built into it. Our agency is not perfect.

Senator Holmberg (mtr #4753) - Closed the hearing on SB2246.

Senator Andrist motioned a Do Pass. Second by Senator Kringstad

Roll call vote 7 yea, 6 nay, 1 absent. Bill will go back to the Human Services Department.

2246

Date:
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number DO PASS

Action Taken _____

Motion Made By Andrist Seconded By Kringstad

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman		✓			
Senator Bowman, Vice Chair		✓			
Senator Grindberg, Vice Chair		✓			
Senator Andrist	✓				
Senator Christmann		✓			
Senator Kilzer	✓				
Senator Krauter					
Senator Kringstad	✓				
Senator Lindaas	✓				
Senator Mathern	✓				
Senator Robinson	✓				
Senator Schobinger		✓			
Senator Tallackson	✓				
Senator Thane		✓			

Total (Yes) 7 No 6

Absent 1 absent

Floor Assignment Human Service

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

Deanna Wall
Operator's Signature

10/21/03
Date

REPORT OF STANDING COMMITTEE (410)
February 10, 2003 12:34 p.m.

Module No: SR-25-2101
Carrier: Fischer
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2246: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS**
(7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). SB 2246 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-25-2101

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2003 HOUSE HUMAN SERVICES

SB 2246

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246

House Human Services Committee

☐ Conference Committee

Hearing Date March 3, 2003

Tape Number	Side A	Side B	Meter #
2		x	0.0 - 44.7
Committee Clerk Signature <i>Sharon Longfellow</i>			

Minutes:

Sen. Fischer appeared as prime sponsor with written testimony stating the reason being people paid child support and employer forgot to pay it in and because of such high arrearages.

Rep. Price: We're putting in what we didn't put in , in 1997?

Answer: Yes

Jim Flemming, Deputy Director and General Counsel of the State Child Support Enforcement Office of the Dept of Human Services appeared in support with written testimony.

Rep. Price: Page 3, section 4 for the income payer, do you go by post marked dates or the date received in the office?

Answer: Date received in our office.

Rep. Niemeier: section on suspending license, can they get their license back? Wouldn't that be counter productive in getting more payments from this obligor?

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10/21/03
Date

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House Human Services Committee
Bill/Resolution Number SB 2246
Hearing Date March 3, 2003

Answer: Can get it back, just need to make a payment plan. I don't see it as being counter productive. Suspension or revocations. This doesn't tell what license to take away it just gives good flexibility.

Rep. Veisz: Page 5, regarding notice must state that the licensing must be active (?) and then on page 6, line 25, an action from the State Agency to withhold, restrict or suspend may not be appealed. Answer: To get in front of a judge right away. Why? Because he knows the case best.

Rep. Porter: Section 3 & 4, Employers responsibility and fines and how were the amounts chosen?

Answer: We would go with contempt process and the amounts were chosen by the sponsor of the bill.

Rep. Porter: Excess payment over and above, who gets the excess? Answer: the obligor, we'd write a check back to the obligor.

Rep. Pollert: Why wouldn't money go to arrears if they are behind? Answer: The check would be written to the SDU and it would go through the automated system where it would apply to current, then arrears and anything left over would be a refund check.

Mr. Flemming: Some things we've used are drivers license revocation, had some limited success, was not a real deterrent.

Rep. Pollert: These fines and suspensions are in place now? Answer Yes, has to be in the code, authority to set them up.

No Opposition. Closed the hearing.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246

House Human Services Committee

☐ Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
2		x	21.3 - 50.4
Committee Clerk Signature <i>Sharon Renshaw</i>			

Minutes: Committee Work.

Rep. Porter: Concerns with Sections 3 & 4, where the dollar amounts collected go back from the employer back to the obligor.

Rep. Weisz: Problem with late fee, employer being caused to report and mail in and then fined. Employer is being forced to do the work.

Rep. Price: Concern with using postmark date.

Rep. Weisz: Is the obligor not allowed even 1 day, payment is due January 1st, you have 30 days before your late, your considered in arrears on January ____.

Rep. Porter: If employer says I'm not going to do it, make it a stiffer penalty (class C misdemeanor) to force them to do what they're supposed to.

Rep. Price: Under current postal service, it could take 7 days to get there.

Rep. Porter: This could exceed those 7 days within the Christmas holiday alone.

Rep. Pietsch: You don't have proof of postmark if letter gets put into the wrong bag.

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Page 2

House Human Services Committee

Bill/Resolution Number SB 2246

Hearing Date March 5, 2003

Rep. Uglem: Question on Page 2, Line 25 of the court shall award damages.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246

House Human Services Committee

☐ Conference Committee

Hearing Date March 17, 2003

Tape Number	Side A	Side B	Meter #
1	x		9.9 - 61.6
		x	0.0 - 15.8
Committee Clerk Signature <i>Sharon Kenyon</i>			

Minutes: Committee work.

Jim Fleming, Deputy Director and General Counsel for the State Child Support Enforcement Office, Dept. of Human Services provided amendments and explained them and handed out written testimony.

Rep. Pollert: We thought of any extra money that was left over and above should go to the obligor, so we thought it should be treated as a fine but if it can't be a fine, whereas the fines go into the general fund no longer a common school trust and that's the thought behind that particular amendment. I still have problems with section 6 and did nothing with section 6, basically what section 6 is doing and its the same as my objections to SB 2245 is given the jurisdiction over to the Child Support Unit. It was the committee as a whole felt that section 6 should stay in there and not be changed.

Rep. Weisz: Interpretation of the day of the postmark.

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Answer by Mr. Fleming: 7 days late or 14 days late or late from what? Transmitted within 7 days.

Rep. Price: So your interpretation if we change that to transmit so then they strictly look at the postmark on the envelope in which it was mailed?

Rep. Price: Because there is potential hardship to the obligor, taking off work, possibly some legal fees, did you discuss a halfway type thing that the obligor could also ____ on the remaining balance and the remaining balance _____.

Rep. Porter: The way that the language is written, its one of two things, its either this mandated \$500.00 or actual damages. So if the obligor went to the judge with actual damages and showed damages then the judge could go above the \$500.00.

Jim Fleming: The way this reads is the obligor was damaged but the State gets to keep it. The balance needs to go back to the obligor.

Rep. Pollert: The obligor should not profit form the business doing something wrong.

Rep. Price: So there is no provisions then for them to have legal fees paid or time off work paid to go to court or something like that. Answer: Not in the amendment.

Jim Fleming: Its a benefit to the obligor if you will, because their arrearage is reduced, but its not going to obligor, its going to the supported family as a payment on the arrears. That's a benefit of this provision. Its only if they got no arrears then it goes to the obligor.

Rep. Pollert: moves the amendment on page 2, line 27 after . insert any damages awarded under this subsection must be reduced by the amount of any late fees with same payment that has been collected by the public authority under section 4, second by Rep. Porter.

VOTE: 13 - 0 - 0

Amendment passed

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Rep. Pollert: moves all the rest of the amendments, second by Rep. Kreidt.

Rep. Niemeier: The obligor is the wrong party in this situation. By order of the state, the child support is being taken out of the check and so it is up to the employer to be paying that. He's the one who has wronged the obligor and I feel any damages are due the obligor and as Mr. Fleming has explained, it can be applied to arrearages or whatever. Amendment failed.

Rep. Porter moved the amendment on page 2, line 25 change 5 to 2, second by Rep. Weisz.

Rep. Porter: The explanation has been given that the minimum amount of the fine is the mandatory part that the Court has to, because of the word shall being in there that the Court has to put in. If the parties go to Court and prove actual damages or higher damages. then the Court can award the damages to exceed the minimum amount is that's in this piece of legislation. The way the system is going to be set up, the first amounts go towards the interest and arrearages and the second amount goes back to the obligor for the sake of not over burdening the business and in the sake of the fine being a reasonable dollar amount that meets the actual damages is what we should be looking at. This is a mandated civil damage amount.

Rep. Amerman: If it went to court, would he have to initiate this to go to court?

Mr. Fleming: A custodial parent could hire a lawyer and go to court, the obligor could do it or if its an open child enforcement case, our program could it as well.

Rep. Weisz: We gotta be clear over damages vs. payment. The employer still has to pay, this is over and above the minimum payment.

Rep. Amerman: Section 6, feels that lowering this down distracts from that. The bigger picture is that we are trying to make some bills here that gives incentive to these people that are paying these payments or suffer the consequences. Its better to leave at \$500.00.

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Rep. Pollert: There's going to be some animosity with the income payer and obligor and no matter how you do it, there's going to be a minimum of the \$200 or which ever is greater, so it will still be covered.

Rep. Wieland: Feels it doesn't matter whether \$200 or \$500, if won't happen twice and the message will be clear.

VOTE: 8 - 4 - 1 Amendment Passed

Mr. Fleming went through process regarding licenses. They would see what types of licenses the person has, send a notice, they would have 30 days to pay arrearage or negotiate payment plan and they will identify which license they will go after. They wouldn't want to take professional license right away unless necessary.

Rep. Price: Allowing for human error, is there any sort of protection for the obligor if in some place the break down of communication happens between you and the licensing agency. Will they get anything in writing. They would have something when leaving your office?

Answer: Yes, they will get a copy of the agreement before leaving our office.

Rep. Price: regarding language for transmit vs. deliver, did anybody come up with anything?

Answer: The consensus that we had was that when it comes to income withholding, the act of delivering income is completed on transmittal. So our thought is, deliver means postmarked (when the letter is postmarked)

Rep. Potter: made a motion for DO PASS as Amended and re-refer to Appropriations, second by Rep. Uglem.

Rep. Niemeier: I feel that section 6 should be removed and should remain with the Courts and not with the department. Rep. Amerman feels the same way.

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House Human Services Committee

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Rep. Uglem: has concerns with section 6, we need to do something to collect and can come back in 2 years to fix it if its being abused.

Rep. Porter: This is giving the agency some tools to beef up collections.

Rep. Potter: No one has to have any license revoked if they just go in and make a payment plan.

VOTE: 9 - 4 - 0

Rep. Porter to carry the bill.

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Hold
Date: March 17, 2003
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2246

House _____ HUMAN SERVICES _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass is Amended & refer to Approp's

Motion Made By

Rep Potter

Seconded By

Rep. Uglem

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair		✓	Rep. Bill Amerman	✓	
Rep. Robin Weisz		✓	Rep. Carol Niemeier		✓
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Uglem	✓				
Rep. Chet Pollert		✓			
Rep. Todd Porter	✓				
Rep. Gary Kreidt	✓				
Rep. Alon Wieland	✓				

Total (Yes) 9 No 4

Absent 0

Floor Assignment

Rep. Porter

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

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Date

10/21/03

REPORT OF STANDING COMMITTEE (410)
March 17, 2003 3:09 p.m.

Module No: HR-47-4949
Carrier: Porter
Insert LC: 38304.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2246: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). SB 2246 was placed on the Sixth order on the calendar.

Page 2, line 25, replace "five" with "two"

Page 2, line 27, after the underscored period insert "Any damages awarded under this subsection must be reduced by the amount of any late fees for the same payment which have been collected by the public authority under section 4 of this Act."

Renumber accordingly

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2003 HOUSE APPROPRIATIONS

SB 2246

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246

House Appropriations Committee

☐ Conference Committee

Hearing Date 03-19-03

Tape Number	Side A	Side B	Meter #
2	X	X	27.7 - 0.3
Committee Clerk Signature <i>Chris J. Nyhus</i>			

Minutes:

Chairman Svedjan Opened SB 2246 for discussion. A quorum was present.

Rep. Clara Sue Price Introduced the bill. We have done well collecting child support, but we aren't there yet. The state is dealing with 185 million dollars in arrears of child support payments. 66 million dollars is due to the state. This bill deals with employers who do not send in the child support when they withhold it. Unfortunately this happens. The child and the obligor suffers when this happens since they get fined.

Chairman Svedjan Could you go back to the fiscal note.

Rep. Price Please ask people from the department.

Rep. Skarphol You are aware of the court decision I mentioned earlier this session?

Rep. Price I'm not sure

Rep. Delzer So you are taking the authority to do this away from the courts and giving it to the department?

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House Appropriations Committee
Bill/Resolution Number SB 2246
Hearing Date 03-19-03

Rep. Price The courts have not done this when they had the opportunity.

Rep. Delzer But that is the essence of it.

Jim Fleming Deputy Director and attorney for the State Child Support Program Last year we asked our regional offices to provide us with statistics on their success and license suspension. Currently it is a contempt of court remedy. In one office, with 94 license restrictions, that office was 0 for 94.

Rep. Delzer The judge made the decision not to revoke the license.

Fleming Correct.

Rep. Delzer What grounds are they doing that on?

Fleming They don't give us reasons. These people are found in contempt, but the judges seem not inclined to suspend their license. The concept of this bill is to increase the deterrent.

Rep. Delzer This allows you guys to revoke the license and if they want to challenge it then they can go to the courts.

Fleming Correct. When someone owes a certain amount we notify them they owe it. If they set up a repayment plan within 30 days we won't revoke their license. When they negotiate their repayment plan, if they had breached, then they can get the license back.

Fleming The total fiscal effect is \$265,000 in the 03-05 biennium. This is just a permissive bill. \$150,000 of that is to program our computer systems for license suspension. \$100,000 is for section 5 of the bill bringing records up to date for arrears. The rest is for postage. The child support program is funded on a 2 to 1 federal match.

Rep. Delzer Is this in the budget?

Fleming No.

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Chairman Svedjan Isn't this something you can handle for programming resources with current resources?

Fleming We're not certain if we can.

Rep. Delzer Other areas in the budget are in greater need than programing.

Rep. Glassheim Doing this could increase collections by 1.1 million per year. How much does the state get of that?

Fleming There is no flat fee that we charge per case. We receive 12.2% on collection rates. A 1.1 million dollar increase in collections would lead to a \$134,000 increase to the state that would be used to fund the TANF and foster care systems in the state.

Rep. Glassheim The money doesn't go into the General Fund? It goes into TANF? Is that replacing money or is it new money for TANF?

Fleming I don't know the answer to that.

Mike Schwendt, Director of the Child Support Program The fees collected are already used for those purposes.

Rep. Delzer My take on this would be that that won't happen that way, but in future bienniums it would increase the amount of other funds used in foster care. This would reduce the amount of TANF funds used to supplement that. We are overspending out TANF block grant for 6 million dollars right now.

Chairman Svedjan The numbers contained in the fiscal note are not in the Department of Human Services' budget. So we are left with a choice of putting money in the budget or modifying the amount, or not putting any money in at all.

Chairman Svedjan If we passed this would we be obligated to fund it in 05-07?

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Schwendt No.

Rep. Delzer Correct, but you'd put this on your priority list somewhere.

Schwendt We have no problem coming back here to request funding for next session.

Chairman Svedjan So if we take the money out of this, but we pass it, then it just puts the policy in place.

Rep. Skarphol Can you tell me how many situations arose last biennium in which you had the option of doing programs but you didn't get the funding and the programs didn't get done?

Schwendt I can't recall that.

Rep. Skarphol What if you had this policy, what would you do?

Schwendt It is difficult to try that, we won't deficit spend on this.

Hearing Closed.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246

House Appropriations Committee

☐ Conference Committee

Hearing Date 03-19-03

Tape Number	Side A	Side B	Meter #
2		X	4.7 - 31.0
Committee Clerk Signature <i>Chris S. Nye</i>			

Minutes:

Chairman Svedjan Opened SB 2246 for discussion. A quorum was present.

Barbara Siegel, Child Support Enforcement for the Department of Human Services See written testimony.

Chairman Svedjan This fiscal note zeroes out, correct?

Siegel Correct, as far as the General Fund.

Chairman Svedjan If no adjustments were made in the budget, and this passed, the policy would be in place?

Siegel Yes.

Rep. Delzer This is an agency bill, is it in the budget?

Siegel Yes, it is for this current biennium.

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Page 2
House Appropriations Committee
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Hearing Date 03-19-03

Rep. Delzer We're going to need actual numbers on this. I'm not comfortable with continuing appropriations.

Mike Schwendt, Director of Child Support Program We don't have a number.

Rep. Delzer You need one.

Rep. Skarphol I move a Do Pass. 2nd by Rep. Carlisle.

Rep. Delzer I can't support this having the court lose the right to decide. We can't give executive agencies judicial powers.

Rep. Carlisle What was the vote on this in Human Services Committee?

Schwendt It was a 9-4 Do Pass vote.

Rep. Carlson So we create the policy, but we aren't funding it?

Chairman Svedjan Yes.

Rep. Carlson If there's no money, why make the policy?

Rep. Kerzman We passed this policy in prior sessions. Did we direct the court to do it?

Rep. Delzer The courts are choosing not to do this license revocation.

Rep. Metcalf The Human Services Committee already heard this. Let's put it to a vote on the floor.

Rep. Delzer Our recommendation is on the whole bill, policy, and the money.

Motion Passes 15-5-3.

REPORT OF STANDING COMMITTEE (410)
March 19, 2003 2:40 p.m.

Module No: HR-49-5233
Carrier: Porter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2246: Appropriations Committee (Rep. Svedjan, Chairman) recommends DO PASS
(15 YEAS, 5 NAYS, 3 ABSENT AND NOT VOTING). SB 2246 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-49-5233

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2003 TESTIMONY

SB 2246

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TESTIMONY
SB 2246 – DEPARTMENT OF HUMAN SERVICES
SENATE HUMAN SERVICES
JUDY LEE, CHAIRMAN
JANUARY 27, 2003

Chairman Lee, members of the Senate Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Office of the Department of Human Services. I am here today to provide information regarding Senate Bill 2246.

I'd like to begin by thanking Senator Fischer on behalf of the Department for his interest in the child support enforcement program, for his service on the Child Support Guidelines Advisory Committee, and for the ideas and help he has offered in sponsoring legislation to improve our operations. We appreciate his interest and the support of his colleagues who co-sponsor bills like Senate Bill 2246.

Section One

Section one of the bill is a proposed change to current law that highlights one of the benefits of the license suspension process in section six of the bill. The current contempt of court process could be delayed under section one while a license suspension process is pending. This saves time for the clerks of court and the judiciary because obligors who are currently scheduled for contempt of court hearings and pay at the last minute would now need to make their required monthly payment to prevent the initiation of a license suspension process. An "Order to Show Cause" proceeding would not have to be scheduled at all in these cases unless the license suspension process was completed and the obligor still did not pay the required monthly child support amount.

Section Two

This section would improve the information we obtain about obligors who move from job to job. The request for information we send under this section is now generated by computer. Before our computer system was able to support this function, each regional office sent their own letters. At least one region asked for information regarding obligors who worked for the employer within the last one hundred and eighty days, rather than just the last thirty days. That region regularly obtained the information without any concerns being expressed by the employers. Based on that experience, we believe the change proposed in section two would not be onerous for employers, but it may result in a significant improvement to our success rate in locating missing obligors and in computing a child support amount under the child support guidelines that accurately reflects the obligor's income or earning ability.

Section Three

We cannot consider money that has been withheld from an obligor's paycheck as child support until the money is sent to the SDU by the employer. If the money is not turned over, the monthly child support obligation has gone unpaid and the obligor is delinquent. This places the obligor in a bad position because the obligor generally won't know the employer has held on to the funds and, once he or she finds out that the money has not been turned over as child support, the recourse of suing the employer for the funds is not a very good option unless the obligor wants to find a new job. The obligee and the child support enforcement program won't know that the funds have been withheld and will generally assume the obligor is no longer employed by the employer and has failed to pay the required support.

Section three will motivate employers to turn over the money they withhold for child support in a timely manner. Under current law, an employer has seven

working days to turn over child support payments to the State. Under section three, an employer who still hasn't paid after fourteen working days is subject to the additional contempt sanction of five hundred dollars in damages or actual damages, whichever is greater. The potential for obtaining this sanction may make the difference on whether asking a court to hold the employer in contempt is worth the time and resources of the obligor, the obligee, or the child support enforcement program in IV-D cases.

Again, the additional sanction won't come into play at all until fourteen working days after the money is withheld from the obligor's wages. If an obligor is paid at the end of the week, this gives the employer nearly three weeks to turn over the money. Any damages collected under section three would be treated as a collection of child support on behalf of the obligor and turned over to the obligee or the obligee's assignee, so the collection of the damages would have a direct benefit to the affected parties.

Section Four

Section four authorizes a late fee of \$25 per day per obligor or \$75 per day, whichever is greater, for each additional business day (after the seven working days the employer has to turn over the withheld money) that a payment is delinquent. For each day that withheld money goes unpaid by the employer:

- The obligor owes judgment interest and, particularly in IV-D cases, may be the subject of collection actions such as credit bureau reporting or increased income withholding;
- The obligee incurs finance charges or other late fees on bills that can't be paid until the child support is received; and
- The child support enforcement program spends time and resources on collection activities that could have been avoided if the funds were turned over in a timely manner.

The late fee authorized in this section would help recover some of the expense that other people incur when an employer is late in turning over the money the employer withheld from the obligor's wages.

Like the additional contempt sanction in section three, any late fee collected by the State under this section of the bill would be treated as a collection of child support and would therefore have a direct benefit to the affected parties.

Section Five

Under this section, the accuracy of the records of the child support enforcement program regarding the amount of past-due support owed by an obligor would continue to improve.

Past-due child support is a judgment by operation of law and therefore accrues interest at a rate of twelve percent per year. In most cases, judgment interest on arrears is paid first before the principal of the arrears. However, until July 1, 2002, the records of the child support enforcement program did not include judgment interest unless it was specifically computed and ordered by a court. Under legislation that was passed by the 2001 Legislative Assembly, we have now begun including interest in our records for arrears that first become due and unpaid after July 1, 2002.

Section five would take the next step and authorize us to account for judgment interest on pre-July 1, 2002, arrears on a prospective basis. These older arrears are still judgments and accrue interest, but we don't currently account for the interest in our records. Including judgment interest in our records will help preserve the purpose of judgment interest and remove any incentive for an obligor to pay interest-bearing debt first before child support. By accruing interest on a prospective basis only, the child support enforcement program is not required to

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engage in the time-consuming process of computing judgment interest for prior periods.

The fiscal note on this bill includes \$100,000 in computer programming expenses and \$15,000 in postage expenses for sending a notice to each delinquent obligor regarding judgment interest. These funds have not been included in the Governor's budget for the next biennium.

Section Six

We agree with the sponsors of the bill that the time has come to test the effectiveness of suspending licenses in IV-D cases through an administrative process rather than a judicial process. It will save time for the judiciary and work well with other enforcement tools that are used by the child support enforcement program without judicial involvement such as income withholding, offsets of state and federal income tax refunds, and administrative liens and executions.

Section six is based on administrative license suspension laws in Virginia and Colorado. Attached to my testimony is an article describing the success of these laws. Virginia has experienced a four percent increase in collections as a result of administrative license suspensions and Colorado has experienced a two percent increase.

Currently, suspension of occupational, recreational, professional, and motor vehicle operator licenses for nonpayment of child support is authorized only as a remedial sanction for contempt of court. Our experience suggests that license suspension as a remedy for contempt of court may not be effective. We have reviewed the number of license suspensions that have occurred since last October and the numbers vary significantly from region to region and from judge to judge. In addition, the contempt process itself may not be the best method for using license suspensions to collect additional child support. An obligor can purge

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himself or herself of contempt at any time by making the payment required for that month. The contempt process needs to start all over again if payments are not made again the next month. This process consumes significant resources and energy to obtain just one payment. The vast majority of contempt hearings for nonpayment of child support are either cancelled or result in a finding of "no contempt" because the obligor pays the amount due for that month. It is only after an obligor is held in contempt that license suspension becomes a possible sanction. For obligors who have been held in contempt, we have experienced very mixed results in response to requests for license suspension.

If suspension of a license is not a realistic possibility, the deterrent value of the law is lost and the notion that there are no real consequences for nonpayment of child support is reinforced.

The administrative process described in section six would help to restore the value of license suspensions as a deterrent for failure to pay child support. The process would begin automatically in IV-D cases when an obligor owes three months' worth of arrears or five thousand dollars, whichever is less. The obligor is given thirty days notice of the suspension and the opportunity to either pay all outstanding arrears or enter into a payment plan with the child support enforcement program. The obligor is also given the opportunity to request a court hearing on whether his or her license should be suspended. If the obligor does not request a hearing and fails to pay the arrears or enter into a payment plan within the thirty-day period, the child support enforcement program will notify the appropriate licensing authority that the license is suspended. Even after an obligor's license is suspended, the obligor can have the suspension lifted at any time by paying the arrears in full or entering into a payment plan with the child support enforcement program. If an obligor later violates the terms of the payment plan, the license suspension process can begin again.

The terms of a payment plan under section six would ensure that license suspension is not a revolving door. A required component of a payment plan in most cases will be a "down-payment" of five hundred dollars or five percent of the outstanding arrears, whichever is greater. The payment plan would look at the obligor's current or most recent monthly obligation and total arrears and come up with a monthly payment amount. Our goal is to automatically revise the amount due under a payment plan when a court increases or decreases the obligor's monthly child support obligation.

The bill gives us discretion in two important areas. First, we could be selective about which licenses to suspend. Second, we would be able to refrain from initiating a license suspension process if the arrears owed by the obligor were ordered on a "retroactive" basis and the obligor is satisfying his or her ongoing current monthly obligation and paying down the arrears.

The definition of "license" in section six expands on current law by including vehicle registrations. An obligor who drives with a suspended license is difficult to catch unless the obligor is stopped for another offense. However, vehicle registrations are generally displayed on the exterior of the vehicle and are easy to identify if they are out-dated. If the bill is passed, we would not envision law enforcement officers physically removing license plates or registrations from vehicles, but the registration would nevertheless be considered suspended and would not be renewed. New licenses and registrations for an obligor may be withheld as well.

Madame chairman, like many other collection tools we already have, administrative license suspension would only affect obligors who fail to pay child support on a regular basis in the amount required by the court under the child support guidelines. As long as an obligor is making the required monthly payments, his or her license will not be affected even if the obligor still owes arrears.

The fiscal note on this bill includes \$150,000 in computer programming expenses. These funds have not been included in the Governor's budget for the next biennium. Accordingly, if the authority in section six is enacted, we would look at implementing the process in the 2005-07 biennium unless we are able to include the necessary changes in the normal ongoing maintenance to our computer system during the 2003-05 biennium.

This concludes my testimony. I would be happy to answer any questions the committee may have.

No Pay, No Drive: The Virginia Drivers' License Suspension Program's Impact on Child Support Compliance

BY DREW A. SWANK, ESQUIRE

It is a good news, not so good news scenario. The good news is that in state fiscal year 2001, the Commonwealth of Virginia's Division of Child Support Enforcement (DCSE) collected \$436 million dollars in child support.ⁱ The not so good news is that \$1.86 billion in child support was still owed by almost 200,000 noncustodial parents to 506,000 children — one-fourth of all children in Virginia.ⁱⁱ To aid in child support collection, DCSE uses a variety of administrative and judicial remedies. The administrative remedies include income garnishments, filing property liens, intercepting state federal income tax refunds, bringing child support debts to credit agencies and requesting the suspension of driving and other licenses.ⁱⁱⁱ Since its inception in 1995, the Virginia Drivers' License Suspension Program has collected over \$100 million of delinquent child support.^{iv}

Based upon legislation proposed by State Senator Edgar S. Robb,^v the Virginia Drivers' License Suspension Program was incorporated in Title 46.2-320 of the Code of Virginia. It allows the Department of Motor Vehicles, after notification from DCSE, to suspend or refuse to renew the driver's license of any noncustodial parent who is delinquent in the payment of child support by ninety days or more, in arrears of an amount of \$5,000 or more, or has failed to comply with a subpoena, summons or warrant relating to paternity or child support hearings.^{vi}

ate legislation that suspends

drivers' licenses of delinquent non-custodial parents was required by the federal "Personal Responsibility and Work Opportunity Reconciliation Act" (PRWORA).^{vii} As of January 1997, forty-three states and jurisdictions had enacted some form of license suspension legislation to aid in child support collection.^{viii} But do drivers' license suspension programs increase child support compliance?

In July 1997, the Office of the Inspector General of the Department of Health and Human Services of the United States published its review of various states' license suspension programs.^{ix} The study evaluated the license suspension programs of eight states, attempting in part to determine whether administrative license suspension programs are more effective than judicial programs.^x Overall, administrative programs were more effective in obtaining

more collections in less time.^{xi} A second, separate study examined the effectiveness of the Colorado's drivers' license suspension program in increasing child support payments.^{xii} This study examined 2,704 cases to determine the impact of both the notice to suspend driver's licenses and the actual suspension.^{xiii} Of these cases, 490 actually had licenses suspended, with an average increase of child support payments of \$514 in a one-year period after the suspension.^{xiv} While both studies indicated that drivers' license suspension programs increased child support payments, neither study focused on the impact a driver's license suspension had on compliance with the previously ordered amount of child support.

In order to determine this specific impact and validate the results of the two previous studies, the



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Charlottesville District DCSE Office examined ninety cases of drivers' license suspensions. By comparing the amount of child support ordered to be paid in each case, and the actual amount paid, at three and six month intervals prior to the driver's license suspension and three and six month intervals after the suspension, two compliance ratios (CR) are calculated. These compliance ratios demonstrate the impact of the driver's license suspension on child support compliance at both three and six months after the suspension.

According to the results of the study,^{xv} on average three months after a driver's license suspension, child support compliance had improved by 30% over what was being paid three months prior to the suspension. Similarly, six months after a driver's license suspension, child support compliance had improved by 27% over what was being paid six months prior to the suspension. While there was a slight decrease in the compliance ratio between the three month and six month time periods, on average 51% of what was ordered to be paid six months after the license suspension was in fact paid, compared to only 24% six months prior to the suspension. Overall, in 73% of the cases in which a driver's license was suspended there was either partial or complete child support compliance. Of these cases, 74% of the court ordered amount was being paid six months after the suspension.^{xvi}

Based upon the results of the study, while on average the Virginia Drivers' License Suspension Program does not result in full payment of child support orders, it nevertheless greatly increases compliance. The effectiveness of the program is comparable with the positive result that incarceration, or the potential of incarceration, has on child support compliance.^{xvii} While the program might not bring in all of the \$1.86 billion of outstanding child support owed,^{xviii} it has the capa-

bility to reach non-compliant non-custodial parents from whom it might otherwise be difficult to receive payments.^{xix} Combined with other enforcement measures, the Virginia's Drivers' License Suspension Program remains an effective way of collecting delinquent child support.

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”

ⁱ DCSE Facts & Statistics - Annual Facts, at: http://www.dss.state.va.us/family/dcse_annualfacts.html (last visited Oct. 16, 2001).

ⁱⁱ *Id.*; Division of Child Support Enforcement, at <http://www.dss.state.va.us/division/childsupp/> (last visited Oct. 16, 2001).

ⁱⁱⁱ DCSE Frequently Asked Questions, at http://www.dss.state.va.us/family/dcse_faq.html (last visited Oct. 16, 2001).

^{iv} DCSE Facts & Statistics, *supra* note 1.

^v S.B. 1032 (Va. 1995) (enacted

March 30, 1995; effective July 1, 1995).

^{vi} VA. CODE § 46.2-320(B) (Michle 2001). Additionally, the statute provides that a suspension or refusal to renew shall not be effective until thirty days after service on the delinquent payer of notice of intent to suspend or refuse to renew. The noncustodial parent may request a judicial hearing, in writing, to the Department of Social Services within ten days from service of the notice of intent. Upon receipt of the request for a hearing, the Department of Social Services shall petition the court that entered or is enforcing the order, requesting a hearing on the proposed suspension or refusal to renew. The court shall authorize the suspension or refusal to renew only if it finds that the noncustodial parent's noncompliance with the child support order was willful. Upon a showing by the Department of Social Services that the obligor is delinquent in the payment of child support by ninety days or more or in an amount of \$5,000 or more, the burden of proving that the delinquency was not willful shall rest upon the obligor. The Department shall not suspend or refuse to renew the driver's license until a final determination is made by the court. *Id.*

^{vii} Pub. L. No. 104-193 (1996). See 42 U.S.C. § 666(a)(16) (2000).

^{viii} Nancy Thoennes and Jessica Pearson, Center for Policy Research, Multiple Intervention Grant: Longer Term Evaluation of Colorado's Driver's License Suspension, at <http://www.acf.dhhs.gov/programs/cse/pubs/reports/colorado/bk03ar01.html> (Feb. 2000).

^{ix} Office of Inspector General, Department of Health and Human Services, Review of States' License Suspension Processes, at www.os.dhhs.gov/progorg/oas/reports/region1/1960250.2.html (July 1997).

^x *Id.*

^{xi} *Id.*

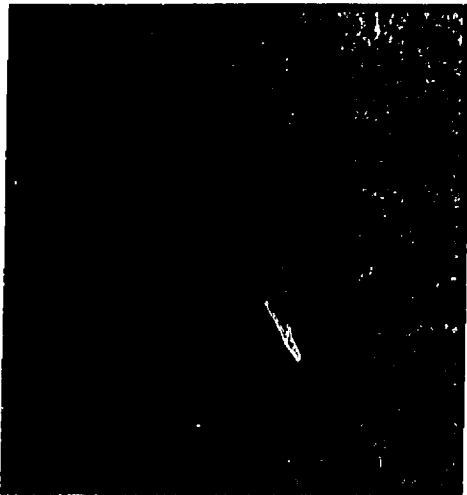
xii Thoennes and Pearson, *supra* note 8.

xiii *Id.*

xiv *Id.*

xv

A control group of 23 cases in



which there was a warning letter but no subsequent suspension of a license was used to validate the impact of suspending a license. The CR at three months in the con-

trol group was 23%; at six months it was 12%. Actual suspension of a license resulted in more than twice as much improvement in payment at six months than a warning letter. Similarly, the improvement in compliance was sustained much better from three to six months with an actual suspension than a warning.

xvi In the control group, in only 65% of the cases in which there was a warning letter but no subsequent suspension were there either partial or full payments, 8% less than in cases in which there was an actual suspension. Compliance in these cases averaged only 61% of the court ordered amount, or 13% less than those cases in which there was an actual suspension. Suspending a license made it both more likely that there would be complete or partial child support compliance, and resulted in higher compliance than merely sending a warning letter.

xvii See Drew A. Swank,

Incarceration's Impact on Child Support Compliance, 2001 INT'L FAM. LAW 131 (Sept. 2001).

xviii Thoennes and Pearson, *supra* note 8. The Colorado driver license suspension program payments represented only two percent of the \$200 million in child support Colorado collects each year. *Id.* The Virginia program is averaging collection of \$17 million per year, or four percent. See DCSE Facts & Statistics, *supra* note 1.

xix Thoennes and Pearson, *supra* note 8. The Colorado study cited an advantage of the driver license suspension program is that it reaches individuals who are not traditional wage earners and therefore not paying child support through wage assignments. *Id.*

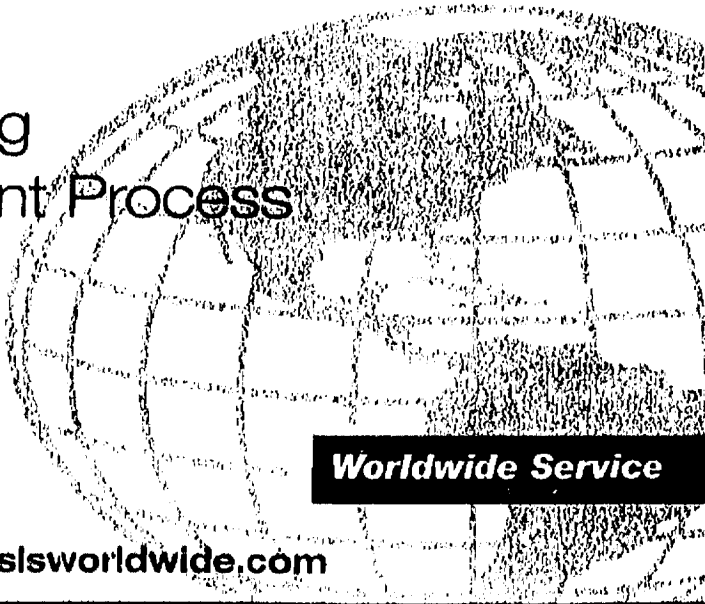
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TESTIMONY - SENATE BILL 2246
HOUSE HUMAN SERVICES
MARCH 3, 2003

Chairman Price, members of the House Human Services Committee, I am Senator Tom Fischer from District 46 in Fargo. I am testifying as the sponsor of Senate Bill 2246 and ask for your favorable consideration of the bill.

Last year, I heard from some constituents with a troubling problem. The constituents were child support obligors who had money withheld from their paychecks to pay their child support obligations, but their employers kept the money and failed to turn it over to the State for disbursement to the family. I contacted the Department and learned that employers currently have seven business days after the money is withheld to send the money to the Department. Until the money is paid to the Department, the child support obligation is not satisfied and the obligor is technically in arrears. Not only is this unfair to the families waiting for the child support payment, it is also unfair to obligors who have had the payment taken out of their wages, particularly since the obligor can be reported to credit bureaus, held in contempt, and required to pay judgment interest on the past-due support.

When I met with the state child support enforcement office on this concern, I was surprised to learn that over \$185 million dollars is owed in past-due support in North Dakota. I think the Legislature, as the policy making branch of government, needs to look at ways to improve the collection of child support arrears. This is particularly true given the significant percentage of the child support enforcement budget that is based on federal incentive payments. The better our state does compared to the other states on certain performance measures, the more funds we receive; the worse our state does compared to the others, the less funds we receive.

In addition to sanctions for delinquent employers, the bill addresses three areas in which

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child support enforcement activities can be improved. First, employers are asked to provide more information regarding past employees. This will help locate obligors and verify the obligor's income history. Second, the law we passed last session regarding judgment interest is amended to continue the process of having the records of the state child support enforcement office accurately reflect the judgment interest that has accrued on a past-due child support obligation.

Finally, I think there is significant untapped potential for additional collections in making revocation or suspension of drivers', recreational (hunting and fishing), and professional licenses a more realistic possibility. Right now, license suspension for failing to pay child support is available only as a remedy for contempt and can be easily avoided at the last minute by making one month's payment. Under the proposed bill, an obligor would need to continue making the required monthly payments or else face a license suspension.

Madame chairman, it is important to note that an obligor who pays his or her monthly child support obligation on time has nothing to worry about under this bill. Even if an obligor is very delinquent, the obligor can keep his or her license indefinitely as long as the obligor enters into a payment plan with the child support enforcement program. License suspension under this bill will be reserved for obligors who refuse to satisfy their monthly payment obligation under the child support guidelines and a reasonable installment on the outstanding arrears. The "down payment" feature of the payment plan will help ensure this process is a meaningful tool for increased collections and not just a revolving door.

Madame chairman, this concludes my testimony on the bill. With your permission, I would ask James Fleming to provide further information on the details of the bill.

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TESTIMONY
SB 2246 – DEPARTMENT OF HUMAN SERVICES
HOUSE HUMAN SERVICES
CLARA SUE PRICE, CHAIRMAN
MARCH 3, 2003

Chairman Price, members of the House Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Office of the Department of Human Services. I am here today to provide information regarding Senate Bill 2246.

Section One

Section one of the bill is a proposed change to current law that highlights one of the benefits of the license suspension process in section six of the bill. The current contempt of court process could be delayed under section one while a license suspension process is pending. This saves time for the clerks of court and the judiciary because obligors who are currently scheduled for contempt of court hearings and pay at the last minute would now need to make their required monthly payment to prevent the initiation of a license suspension process. An "Order to Show Cause" proceeding would not have to be scheduled at all in these cases unless the license suspension process was completed and the obligor still did not pay the required monthly child support amount.

Section Two

This section would improve the information we obtain about obligors who move from job to job. The request for information we send under this section is now generated by computer. Before our computer system was able to support this function, each regional office sent their own letters. At least one region asked for information regarding obligors who worked for the employer within the last one hundred and eighty days, rather than just the last thirty days. That region regularly obtained the information without any concerns being expressed by the employers.

Based on that experience, we believe the change proposed in section two would not be onerous for employers, but it may result in a significant improvement to our success rate in locating missing obligors and in computing a child support amount under the child support guidelines that accurately reflects the obligor's income or earning ability.

Section Three

We cannot consider money that has been withheld from an obligor's paycheck as child support until the money is sent to the SDU by the employer. If the money is not turned over, the monthly child support obligation has gone unpaid and the obligor is delinquent. This places the obligor in a bad position because the obligor generally won't know the employer has held on to the funds and, once he or she finds out that the money has not been turned over as child support, the recourse of suing the employer for the funds is not a very good option unless the obligor wants to find a new job. The obligee and the child support enforcement program won't know that the funds have been withheld and will generally assume the obligor is no longer employed by the employer and has failed to pay the required support.

Section three will motivate employers to turn over the money they withhold for child support in a timely manner. Under current law, an employer has seven working days to turn over child support payments to the State. Under section three, an employer who still hasn't paid after fourteen working days is subject to the additional contempt sanction of five hundred dollars in damages or actual damages, whichever is greater. The potential for obtaining this sanction may make the difference on whether asking a court to hold the employer in contempt is worth the time and resources of the obligor, the obligee, or the child support enforcement program in IV-D cases.

Again, the additional sanction won't come into play at all until fourteen working days after the money is withheld from the obligor's wages. If an obligor is paid at the end of the week, this gives the employer nearly three weeks to turn over the money. Any damages collected under section three would be treated as a collection of child support on behalf of the obligor and turned over to the obligee or the obligee's assignee, so the collection of the damages would have a direct benefit to the affected parties.

Section Four

Section four authorizes a late fee of \$25 per day per obligor or \$75 per day, whichever is greater, for each additional business day (after the seven working days the employer has to turn over the withheld money) that a payment is delinquent. For each day that withheld money goes unpaid by the employer:

- The obligor owes judgment interest and, particularly in IV-D cases, may be the subject of collection actions such as credit bureau reporting or increased income withholding;
- The obligee incurs finance charges or other late fees on bills that can't be paid until the child support is received; and
- The child support enforcement program spends time and resources on collection activities that could have been avoided if the funds were turned over in a timely manner.

The late fee authorized in this section would help recover some of the expense that other people incur when an employer is late in turning over the money the employer withheld from the obligor's wages.

Like the additional contempt sanction in section three, any late fee collected by the State under this section of the bill would be treated as a collection of child support and would therefore have a direct benefit to the affected parties.

Section Five

Under this section, the accuracy of the records of the child support enforcement program regarding the amount of past-due support owed by an obligor would continue to improve.

Past-due child support is a judgment by operation of law and therefore accrues interest at a rate of twelve percent per year. In most cases, judgment interest on arrears is paid first before the principal of the arrears. However, until July 1, 2002, the records of the child support enforcement program did not include judgment interest unless it was specifically computed and ordered by a court. Under legislation that was passed by the 2001 Legislative Assembly, we have now begun including interest in our records for arrears that first become due and unpaid after July 1, 2002.

Section five would take the next step and authorize us to account for judgment interest on pre-July 1, 2002, arrears on a prospective basis. These older arrears are still judgments and accrue interest, but we don't currently account for the interest in our records. Including judgment interest in our records will help preserve the purpose of judgment interest and remove any incentive for an obligor to pay interest-bearing debt first before child support. By accruing interest on a prospective basis only, the child support enforcement program is not required to engage in the time-consuming process of computing judgment interest for prior periods.

The fiscal note on this bill includes \$100,000 in computer programming expenses and \$15,000 in postage expenses for sending a notice to each delinquent obligor regarding judgment interest. These funds have not been included in the Governor's budget for the next biennium.

Section Six

We agree with the sponsors of the bill that the time has come to test the effectiveness of suspending licenses in IV-D cases through an administrative process rather than a judicial process. It will save time for the judiciary and work well with other enforcement tools that are used by the child support enforcement program without judicial involvement such as income withholding, offsets of state and federal income tax refunds, and administrative liens and executions.

Section six is based on administrative license suspension laws in Virginia and Colorado. Attached to my testimony is an article describing the success of these laws. Virginia has experienced a four percent increase in collections as a result of administrative license suspensions and Colorado has experienced a two percent increase.

Currently, suspension of occupational, recreational, professional, and motor vehicle operator licenses for nonpayment of child support is authorized only as a remedial sanction for contempt of court. Our experience suggests that license suspension as a remedy for contempt of court may not be effective. We have reviewed the number of license suspensions that have occurred since last October and the numbers vary significantly from region to region and from judge to judge. In addition, the contempt process itself may not be the best method for using license suspensions to collect additional child support. An obligor can purge himself or herself of contempt at any time by making the payment required for that month. The contempt process needs to start all over again if payments are not made again the next month. This process consumes significant resources and energy to obtain just one payment. The vast majority of contempt hearings for nonpayment of child support are either cancelled or result in a finding of "no contempt" because the obligor pays the amount due for that month. It is only after an obligor is held in contempt that license suspension becomes a possible

sanction. For obligors who have been held in contempt, we have experienced very mixed results in response to requests for license suspension.

If suspension of a license is not a realistic possibility, the deterrent value of the law is lost and the notion that there are no real consequences for nonpayment of child support is reinforced.

The administrative process described in section six would help to restore the value of license suspensions as a deterrent for failure to pay child support. The process would begin automatically in IV-D cases when an obligor owes three months' worth of arrears or five thousand dollars, whichever is less. The obligor is given thirty days notice of the suspension and the opportunity to either pay all outstanding arrears or enter into a payment plan with the child support enforcement program. The obligor is also given the opportunity to request a court hearing on whether his or her license should be suspended. If the obligor does not request a hearing and fails to pay the arrears or enter into a payment plan within the thirty-day period, the child support enforcement program will notify the appropriate licensing authority that the license is suspended. Even after an obligor's license is suspended, the obligor can have the suspension lifted at any time by paying the arrears in full or entering into a payment plan with the child support enforcement program. If an obligor later violates the terms of the payment plan, the license suspension process can begin again.

The terms of a payment plan under section six would ensure that license suspension is not a revolving door. A required component of a payment plan in most cases will be a "down-payment" of five hundred dollars or five percent of the outstanding arrears, whichever is greater. The payment plan would look at the obligor's current or most recent monthly obligation and total arrears and come up with a monthly payment amount. Our goal is to automatically revise the amount due under a payment plan when a court increases or decreases the obligor's monthly child support obligation.

The bill gives us discretion in two important areas. First, we could be selective about which licenses to suspend. Second, we would be able to refrain from initiating a license suspension process if the arrears owed by the obligor were ordered on a "retroactive" basis and the obligor is satisfying his or her ongoing current monthly obligation and paying down the arrears.

The definition of "license" in section six expands on current law by including vehicle registrations. An obligor who drives with a suspended license is difficult to catch unless the obligor is stopped for another offense. However, vehicle registrations are generally displayed on the exterior of the vehicle and are easy to identify if they are out-dated. If the bill is passed, we would not envision law enforcement officers physically removing license plates or registrations from vehicles, but the registration would nevertheless be considered suspended and would not be renewed. New licenses and registrations for an obligor may be withheld as well.

Madame chairman, like many other collection tools we already have, administrative license suspension would only affect obligors who fail to pay child support on a regular basis in the amount required by the court under the child support guidelines. As long as an obligor is making the required monthly payments, his or her license will not be affected even if the obligor still owes arrears.

The fiscal note on this bill includes \$150,000 in computer programming expenses. These funds have not been included in the Governor's budget for the next biennium. Accordingly, if the authority in section six is enacted, we would look at implementing the process in the 2005-07 biennium unless we are able to include the necessary changes in the normal ongoing maintenance to our computer system during the 2003-05 biennium.

This concludes my testimony. I would be happy to answer any questions the committee may have.

TESTIMONY
SB 2246 – DEPARTMENT OF HUMAN SERVICES
HOUSE HUMAN SERVICES
MARCH 17, 2003

Chairman Price, members of the House Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Office of the Department of Human Services.

The Committee has received proposed amendments that have been produced as a result of the subcommittee's work on the bill. The first amendment provides that there can be no overlap between late fees collected by the child support program under section 4 of the bill and the statutory damages authorized in a contempt proceeding under section 3 of the bill. We would not plan to pursue contempt charges against an income payer who pays the withheld funds and the late fees, and so we have no objection to the amendment.

We do, however, object to the second amendment, which provides that the balance of any fees or damages imposed under sections 3 and 4 would be retained by the child support enforcement program. Although we can certainly use the additional funding, and there is a cost to the child support enforcement program of handling delinquent income payers, we strongly disagree with the possibility that we would profit from the delay of an income payer in turning over withheld funds. We want neither the perception nor the fact that we enforce or don't enforce the law based on how the program benefits from the enforcement.

The collection of the delinquent payment plus interest will go a long way to helping to compensate the families for the fact the child support payment was late. However, when an income payer unlawfully holds on to withheld funds, the obligor has a difficult choice: make a second child support payment or allow the child support obligation to become delinquent and risk being held in contempt of court and having other collection actions being taken against the obligor by the child support enforcement program or the supported family. It is the obligor who is


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harmd in every case that funds are withheld unlawfully, and it is fair for the obligor to retain the balance of any statutory damages that remain after the child support is paid.

A proposal was discussed by the subcommittee to remove the statutory damage of \$500 and pursue only actual damages. The difficulty of such a proposal is that, to obtain compensation for the inevitable damage to the obligor from the employer's actions, the obligor would need to participate in the contempt proceeding. Not only would the obligor have to present evidence and testify against the employer, the obligor would have to request time off to attend the hearing from the same employer. This too would create a very unfair situation for obligors.

Madame chairman, we appreciate the subcommittee's hard work on the bill and its agreement with the vast majority of its provisions, but we must ask the committee to consider defeating the second proposed amendment.

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Prepared for Human Services Subcommittee
3/17/03

PROPOSED AMENDMENTS TO SENATE BILL 2246

Page 1, line 8, after "support" insert "; and to provide a continuing appropriation"

Page 2, line 27, after the period insert "Any damages awarded under this subsection must be reduced by the amount of any late fees for the same payment that has been collected by the public authority under section 4 of this Act."

Page 2, line 29, replace "must be paid to" with "is appropriated on a continuing basis to the public authority to carry out its duties under title IV-D."

Page 2, line 30, remove "the obligor."

Page 3, line 14, replace "must be paid to the obligor" with "is appropriated on a continuing basis to the public authority to carry out its duties under title IV-D"

Renumber accordingly

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