

2009 HOUSE HUMAN SERVICES

HB 1329

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1329

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 9, 2009

Recorder Job Number: 8984

Committee Clerk Signature



Minutes:

Chairman Weisz called the hearing to order on HB 1329.

Rep. Weisz sponsored and introduced the bill: We need to look at this issue. Child Support

Enforcement is looking at bonuses and overtime which might not be on an on-going basis.

They should be looking at what they are currently making on a regular basis. It's important we have the obligor paying child support on time so they stay current. If their payments are based on a one- time bonus or sometimes overtime that is not a true picture of what they make. Their obligatory payments will be higher than they can maintain on what they actually make on a regular basis and cause them to go into arrearage.

Rep. Porter: As we have looked at this in the past, have you given any thought to a kind of yearend audit type situation that by Feb 1 the year proceeding that you get your 1099s and if you haven't paid up to that amount of your percentage of your income that you are suppose to pay, that you need to write a check. And that check needs to be based on the formula and distributed to the kids. Then if that bonus doesn't happen or the extra overtime in November doesn't happen, then really your wage is based on your base not on any of your extra things.

But, if you do get the extra things, you need to pay on that additional money you received because it is your obligation?

Rep. Weisz: I haven't looked at that part specifically. If it was a perfect world, Child Support would be adjusting monthly. Sometimes a person is working overtime just to support themselves. There's never a simple solution. We want what is best for the child. Looking at how can we make it more current.

Rep. Holman: The word atypical in there, does that take care of season employment? Seasonal employment is quite variable.

Rep. Weisz: It wouldn't take care of it.

Rep. Holman: Sounds like it could end up in court.

Rep. Weisz: Anything relating to child support usually ends up in court.

Rep. Conklin: Does this take out annual bonuses?

Rep. Weisz: No, not reoccurring bonuses.

Jon Aman a Bobcat employee testified in support of bill: See handout #1. Believe everyone should pay child support. It's getting so I can't pay for my house. I paid \$600 for BC/BS and pay \$800 a month child support for twin daughters. When I talk to Child Support, they tell me I can make \$40,000 plus a year. I could lose my job too. I'm laid off right now. You end up in court all the time. I can't afford an attorney anymore. They use my best year and why not my worse year of income. I can't go on anymore. I'm losing it. Talked to Senator Levi last week.

Rep. Weisz: Where does the \$40,000 come from?

Jon Aman: That came from one year of making \$40,000. Now I make \$36,000.

Rep. Porter: In a time period of 8 years, how many times did Child Support review your income?

Jon Aman: Every 3 years.

Rep. Porter: Since 2000 it's been reviewed twice and you had one year of \$40,000 and two years of \$36,000, which year did you make the \$40,000?

Jon Aman: 2007.

Rep. Porter: You are due for a review in 2000.

Jon Aman: It was every three, now is it every two years? I don't know.

Rep. Conrad: Does the \$40,000 come from bonuses?

Jon Aman: No.

Rep. Conrad: Why does income go up and down?

Jon Aman: Overtime and being laid off. When we were on strike we got a sign up bonus.

Rep. Potter: You mentioned your ex-wife is not working so you are in charge of child support.

Was that handled in the divorce decree as to who is in charge of support?

Jon Aman: I'm paying \$800. We need to use a common guideline. I have been told I have to pay for their instruments also (by the Judge).

Paulette Oberst Policy Administrator with Child Support: Provided information. **See Testimony #2.**

Rep. Nathe: In the last paragraph you talked about parties disagreeing (inaudible) charges atypical and not occurring. Couldn't this be taken care of by looking at the pay history of the obligor going back 5-10 years?

Paulette Oberst: That is what the court would do if parties don't agree.

Rep. Porter: In current system when obligation is established and you are looking at previous how many years income to determine what the future obligation is?

Paulette Oberst: Depends on case. If obligor working, basically the child support office would maybe look up the most recent tax return and use that for basis of payment. If obligor is

unemployed or underemployed at time obligation is being determined, then it gets more complicated. If self-employed, income averaging over a period of 5 years is basis to determine.

Rep. Porter: If hourly waged employee of manufacturing company and has W-2s where one shows \$40,000 and the \$36,000, which number are they going to pick?

Paulette Oberst: They look at most recent tax return. Obligor can ask court to look at it again.

Rep. Porter: In current situation with Bobcat layoff since January 1, their wages are cut in half because of unemployment. Are they all going to be placed in arrearages because of those wages that they have no control of?

Paulette Oberst: Yes.

Rep. Porter: Mention was made to a number of cases where the obligor has overpaid into the system and they can't get their money back. How are those handled in the case of

overpayment of support and how would a person apply to get their money back from the child support system?

Paulette Oberst: I'm not sure how the context of the overpayment, the additional payment could be refunded to the obligor.

Rep. Kilichowski: You said this is consistent with other states that have this law. How many states haven't yet, can you give me how long it has been in the states and that the arrears have gone down because of the consistency in the law?

Paulette Oberst: Don't have those stats.

Chairman Weisz: What is the current policy now and how do you treat imputed income?

Paulette Oberst: Only issue if the obligor is unemployed or underemployed. The underemployed is considered underemployed if he's making minimum wage or is less than

60% of statewide average earnings for somebody in a similar occupation of obligor.

Chairman Weisz: It doesn't apply to change of occupation?

Paulette Oberst: Can come into play at courts discretion.

Chairman Weisz: So if for example, in my case I decided not to run again as a legislator or got beat, the court can impute that income saying I should have stayed in?

Paulette Oberst: If an obligor makes a voluntary change in employment that resulted in reduction of income, that the court may impute that income.

Rep. Conrad: When someone's health insurance goes up, is there any way the court would take that into account?

Paulette Oberst: Actually the guidelines do take into consideration when obligor is paying for health insurance for their children. There is a deduction (inaudible) for a portion of the payment. Some exceptions we will do an early review.

Rep. Nathe: If Mr. Aman in the last 8 years he made \$36,000 and one year he made \$32,000.

Would they drop his payment?

Paulette Oberst: It would depend upon the timing. If obligor was before the court and the most recent wages you looked at were \$32,000, most likely obligation would be based on \$32,000.

Rep. Kilichowski: On calculations you use, does it make a difference if it is a union or non-union?

Paulette Oberst: No.

Rep. Frantsvog: I want to a follow-up on Rep. Nathe's question. In the example that was given to us by Mr. Aman, he had a year when he earned \$40,000 and for one reason or another that's the earning that became the basis of his payment. Is that correct?

Paulette Oberst: Yes.

Rep. Frantsvog: In his situation, if the \$40,000 had been \$32,000, would his calculation been based on that or some other number?

Paulette Oberst: Probably the \$32,000.

Rep. Conklin: My understanding you set the rate.

Paulette Oberst: The guidelines are developed by the DHS; they are in administrative rules and code. Only the court can order the obligor to pay.

Rep. Conklin: But don't the courts can review it when things change or do you do that?

Paulette Oberst: We do the number crunching. Make a proposal and have the parties look at it and if they disagree we have court make the decision.

Rep. Kilichowski: Can the custodial parent request review anytime?

Paulette Oberst: Request can be made anytime.

Rep. Kilichowski: Hypothetically, a spouse found out noncustodial parent made a one-time bonus of \$5,000, does that affect his future obligation?

Paulette Oberst: If \$5,000 was actually included in the calculation, then yes it would be based on that amount.

Chairman Weisz: For non-custodial obligor who made \$36,000 a few years and then made \$32,000 one year and you based your calculation on the \$32,000, the custodial parent is going to have an issue with that. Are you only going to look at that \$32,000 and not the prior years?

Paulette Oberst: Wouldn't have reason to look back.

Chairman Weisz: They are requesting a review because they are saying it should go from \$36,000 to \$32,000. When they request it, you should review it.

Paulette Oberst: They don't have to justify why they want it reviewed.

Chairman Weisz: And you don't look beyond that last year's fiscal?

Paulette Oberst: We wouldn't have any need to unless they are unemployed or underemployed.

Chairman Holman: The 3 year thing, you have to review it on request. Do you receive a lot of requests within that 3 year time and what usually happens?

Paulette Oberst: We do receive a lot of (interrupted by Rep. Holman)

Rep. Holman: In otherwise, if I have a change in income maybe by \$3,000-\$5,000, and I say I want to be reviewed, would you review it or just say wait.

Paulette Oberst: We would look to see if the order is 3 years old. If it is not, then we would look to see if one of the exceptions that we have identified, applied. If it does, we would conduct the review.

Rep. Nathe: Seems like double standard here. Find it hard they will drop his payments immediately. I can see the spouse and other people involved saying, hey that is only one exception. Chances he will be back up to 36 again. I have a hard time with that. Seems easy to go up, but pretty hard to go down.

Paulette Oberst: We do the number crunching and the numbers fall where they fall and that's how we do our proposal.

Rep. Nathe: Wouldn't it be better if you had more of a pattern versus one time, saying have to have this income for 2-4 years before it is increase or decreased vs. having one year of increase?

Paulette Oberst: Operationally don't think it would make a lot of difference because we would still be assembling the financial information and still be doing the number crunching and applying the amount to the guidelines. Not sure either party would be benefiting. Or are you suggesting we change the review from 3 to 2 years?

Rep. Nathe: Looks to me like a hasty judgment after one year of salary increase, why not make that judgment after 2 consecutive years of a salary increase?

Paulette Oberst: That certainly be one way to look at it. I think it can work both ways.

Rep. Uglem: When custodial parent remarries, who new source of support through her new husband is not considered?

Paulette Oberst: That's correct your Honor.

James Fleming from Child Support: We are vigilant not to be advocates for either parent. We look at numbers from last year to make decision on obligor's responsibility. We don't use either married parent's spouse's income.

Rep. Damschen: When the obligor's amount to pay, on the typical case, is that based on the figures an equal percentage or half of what it costs to raise a child?

James Fleming: Guideline table that's an administrative rule comes from the U.S. Dept. of Agriculture based on the cost of raising a child in a single parent home. Keep in mind we are talking about two concepts here, the guidelines and how often the guidelines are applied. We call it (inaudible) adjustment.

Rep. Damschen: Is there any consideration that, if the couple was still together and the one who is obligated to pay child support, was still the income provider and he was making the same amount as he's making now, the family wouldn't be living within their means. Is that applied?

James Fleming: It is applied. If it is suppose to go down, it does go down.

Rep. Hofstad: Within guidelines, is there an obligation from custodial parent?

James Fleming: We don't apply economic value what custodial parent's obligation is. The contribution of the custodial parent is deemed to be provided in the form of day to day care they provide as a custodial parent.

Rep. Porter: In Mr. Aman's case, he made a statement that the Judge had made a comment that, now that your daughters are in music, you'd better be coming up with half of this addition to this and on top of this and this kinds of things. Can Judges do that and go outside of guidelines and how does that work back into the situation then, does it come off from that part

of the guidelines? In his specific case, he is already paying that portion off from his income, but then being asked to pay for more.

James Fleming: If I were in private practice and representing Mr. Aman under those facts, there would be arguments that I could make that this is going beyond the guidelines. There are criteria in the guidelines that talk about extraordinary expenses of children. There's case law that suggests the guidelines are minimums and not a maximum so the court could go beyond that. In Mr. Aman's case this was not a product of the guidelines, this was a Judge exercising what their discretion and judgment based on the facts they were given.

Rep. Conrad: Under your new guidelines, is this bill necessary?

James Fleming: This bill moves the consideration of the atypical which changes from being (inaudible) criteria for reasons to go outside the guidelines to doing something that is imbedded in the original guidelines calculation.

Rep. Uglem: Can you give us an idea what it costs an obligor to go to court to appeal?

James Fleming: It would be difficult for me to come up with that because the range is so significant. I'd venture a guess of \$2,000.

Vice-Chairman Pietsch closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1329

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 16, 2009

Recorder Job Number: 9545

Committee Clerk Signature



Minutes:

Chairman Weisz: Let's look at 1329. Any discussion or amendments. Some conversation about putting in imputed income into this too.

Rep. Conrad: This is a good issue.

Chairman Weisz: I was sitting on this bill trying to see if there was some solution for some of the issues that (inaudible). We are meeting with some of them next week that maybe we can do internally, but that is the only reason I sat on it. Some pressure seems to be off because they have gone back to work, but an awful lot who aren't going back to work. Still meeting with Child Support to see if there isn't some temporary solution, but we are bound by some of the federal rules that put a real crimp on this bill.

Rep. Porter: In the Bobcat situation, when they go into layoffs and end up on unemployment for \$400 a week, that child support stays at whatever it was and they are instantly thrown into arrears. When I talked to Mr. Fleming about that, they don't look at it unless it goes on for 6 months. I was told when they go into arrears, they are not charged with interest or no hunting privileges taken away as long as you are making a good faith effort to pay arrears. I have a

Mandan constituent who is self employed carpet layer, tile installer, hardwood floor installer.

Those three jobs are separately listed on the Job Service website. When he went to court the

Judge imputed him at 100% tile installer, even though that only made up about 30% of his business. And the other two classifications were significantly less per hour than what the tile installer was. Example: tile installer is \$20/hr, carpet layer is \$15/hr and hardwood installer is \$10/hr. So rather than take the percentage of work that the individual did to figure out what he should be imputed at, the Judge took the highest one and imputed him at 100% and that is only 30% of his business. That put him back and he wasn't happy. Something needs to be done at impunity. It can be unfair to a jack of all trades.

Rep. Holman: Came to my mind the ripple effect. If there could be an adjustment it ripples down to the children and household. Don't have an answer for it.

Chairman Weisz: You are correct. Also if that family that remained intact, they would all be now under that \$400 a week unemployment. We don't want to put obligor in a position where they go underground because there is no way they can make up the arrearages.

Rep. Porter: I will ask the bill sponsor to look at the impute things as it moves through the system and ask for amendments in Senate.

Rep. Porter: Motion for a DO PASS.

Rep. Conrad: Second.

Roll Call Vote: 13 yes, 0 no, 0 absent.

MOTION CARRIED ON DO PASS.

BILL CARRIER: Rep. Conklin

Date: 2-16-09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1329

House HUMAN SERVICES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

☒ Do Pass

☐ Do Not Pass

☐ Amended

Motion Made By

Rep. Porter

Seconded By

Rep. Conrad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSGOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes)

13
0

No

0

Absent

Bill Carrier

Rep Conklin

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

REPORT OF STANDING COMMITTEE

HB 1329: Human Services Committee (Rep. Weisz, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1329 was placed on the
Eleventh order on the calendar.

2009 SENATE HUMAN SERVICES

HB 1329

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1329

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 03/04/2009

Recorder Job Number: 10227

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman J. Lee Opened the hearing on HB 1329

Representative Francis Wald District #37. Introduced HB 1329. Gave an example of father who overpaid child support on his children due to the increase in his SS payment leading to 12,000 dollars worth of overpayment. This bill would provide a mechanism for refunding money.

Chairman J. Lee I expect that the money has already gone to the custodial parent so the Child Support Enforcement Unit (CSEU) does not have the money in hand and we are not going to get it back from the custodial parent. If we are going to repay him, would we have to have an appropriation?

Representative Robin Weisz District #14. Spoke in support of HB 1329. This is a simple bill that is very important. It states that we will not use atypical bonuses and overtime to calculate child support. Last time we discussed this we added the language telling the court that they "may" take this into account. The bill is in front of you because of constituent concerns.

Temporary sources of income such as bonuses and overtime should not be factored into child support. I do not think this bill is trying to help people get around paying for child support.

Talked at length about hypothetical examples.

Senator Lee It occurs to me that if in my real job someone applies for a home loan, they have to show that the income is steady for three years in order for it to count towards qualifying for a loan. I thought originally that might be a good way of structuring this but with the economy, I do not think so anymore.

Weisz Often times with the increased burden of supporting two households, the non custodial parent is forced to take up extra hours in order to pay for the households. It does not seem helpful to then take 30% of that extra money that they are trying to use to pay the original child support amount.

Senator Heckaman What about people who have been laid off? The layoff is too short of a time to factor into child support making it more difficult to keep up with payments.

Weisz I believe that we have put something in place outside of the law that will allow us to immediately take that into account through the courts.

Discussion about possible solutions to the problem

John Almon (unsure of spelling, did not sign in) Works at Bobcat. Gave personal testimony about his experience having to pay child support. It is very difficult to get ahead if the extra income I make to cover expenses is then docked for child support.

Chairman J. Lee Is overtime a large percentage of your income?

Almon In 2007 I made (unclear) and this year I made 36,000 and sometimes I don't even have a job.

Chairman J. Lee So is 36,000 the base number?

Almon When they did my review, Sheila from child support said that I am capable of making over 40,000+.

Chairman J. Lee We are back to computed income again; we are not fans of that.

Almon I'm in danger of losing of my job; I don't know what we should do.

Chairman J. Lee This bill will allow us to do something about this; we appreciate you coming in to speak with us. We are going to try and find a long term solution that helps everyone. Mr. Schwindt, what happens with the Bobcat situation?

Mr. Schwindt DHS. Explained what is happening. We will continue to work with the individuals to find a solution for both parties. No one wants to get anyone into a negative position; we are committed to getting this work for everyone.

Chairman J. Lee I think it is easy to forget that you are doing what the law tells you to do; it is not your money you are dealing with in these situations. This is not something we can just let go, like you said we will all work together on this.

There was no opposition testimony given

Paulette Oberst Policy Administrator with the CSE division of DHS. Provided information on 1329. See attachment #1.

Chairman J. Lee Do you require verification to be sent from employers in regards to things such as bonuses or overtime? Can you walk us through how you asses income?

Oberst The first thing that we do when we do a guideline calculation, in a review situation, is to look to the obligor for a lengthy financial affidavit. We do also request pay stubs, W2s and other forms. We can also go to the tax department for further information. Went into detail about how financial information is gathered.

Chairman J. Lee It occurs to me that the question of "how much are you making" and "how much overtime are you getting" are two easy questions for an employer to provide. That is how it works in real estate so that people do not get into loans they cannot repay.

Oberst We would be happy to look into that.

Chairman J. Lee Closed the hearing on HB 1329.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1329

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 03/09/2009

Recorder Job Number: 10519

Committee Clerk Signature

Mary K Monson

Minutes

Chairman J. Lee Opened the discussion on HB 1329.

Senator Erbele Spoke about an example from one his constituents that led to him drafting an amendment.

Mike Schwindt Child Support DHS. There is no easy way to do this. The guidelines have been in existence for many years but nonetheless the guidelines will be open for discussion this summer as they are reviewed every 4 years. We have no problem with the amendment. We will need to find a CPA to sit at the table and help us review this. We will work at finding a workable solution.

Discussion about the amendment and anecdotal stories about child support

Senator Erbele I move the amendment

Senator Dever Second

The Clerk called the role on the motion to move the amendment. **Yes: 5, No: 0, Absent: 1**
(Senator Marcellais).

Senator Heckaman I move **Do Pass as Amended.**

Senator Dever Second

The Clerk called the role on the motion to **Do Pass as Amended. Yes: 5, No: 0, Absent: 1**

(Senator Marcellais).

Senator Erbele will carry the bill.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1329

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10756

Committee Clerk Signature

Mary K Monson

Minutes:

Senator J. Lee opened the committee for additional information relating to a pro obligor change and would be tied to the atypical wages and overtime bill. She asked James Fleming, Deputy Director/Chief Legal Counsel to present this information in response to the issue of overpayments of child support by an obligor.

Mr. Fleming explained that because of the issue of overpayments and what to do with an obligor who has overpaid child support the department prepared a file memo on what they currently do with overpayments. He provided a copy of this memo (attachment #3) and explained it.

(Meter 12:00) He explained crediting overpayments in more detail to answer a question from

Senator J. Lee.

Mr. Fleming said they feel the case by case decisions in this area need to be made by a judge. It is their goal to make sure it gets brought back to the judge and explained their process.

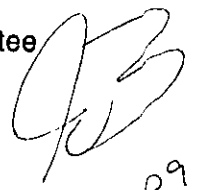
The three year review process was discussed.

Senator Marcellais asked how they would control the winnings of the gaming in casinos.

Mr. Fleming replied that the Indian casinos are not subject to the reporting process. They are beyond the jurisdiction of the state.

There was a short discussion that the court has the ability to deal with the problem and everything can't and shouldn't be legislated.

No further work was done on HB 1329.


3-10-09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1329

Page 1, line 2, after "guidelines" insert "; and to provide an agency directive"

Page 3, after line 10, insert:

"SECTION 2. ADMINISTRATIVE RULEMAKING - ADDITIONAL REBUTTAL CRITERIA. As part of the first rulemaking commenced under section 14-09-09.7 after the effective date of this Act, the Department of Human Services shall adopt new criteria for rebutting the presumptively correct amount of support determined under the child support guidelines based on the increased ability of an obligor, whose income is decreased based on depreciation, to provide child support."

Renumber accordingly

Date: 3/9/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1329

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Rerefer to Appropriations

☒ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Erbele Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais		
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

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

Date: 3/9/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1329

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90675.0101 Title 0200

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Rerefer to Appropriations
☐ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Heckaman Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais		
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Erbele

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

REPORT OF STANDING COMMITTEE

HB 1329: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1329 was placed on the Sixth order on the calendar.

Page 1, line 2, after "guidelines" insert "; and to provide an agency directive"

Page 3, after line 10, insert:

"SECTION 2. ADMINISTRATIVE RULEMAKING - ADDITIONAL REBUTTAL CRITERIA. As part of the first rulemaking commenced under section 14-09-09.7 after the effective date of this Act, the Department of Human Services shall adopt new criteria for rebutting the presumptively correct amount of support determined under the child support guidelines based on the increased ability of an obligor, whose income is decreased based on depreciation, to provide child support."

Renumber accordingly

2009 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1329

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1329

House Human Services Committee

☒ Check here for Conference Committee

Hearing Date: April 13, 2009

Recorder Job Number: 11836

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz called the Conference Committee to order on HB 1329.

Chairman Weisz: We have some amendments by the Senate. Would the Senate please explain the rationale of what the amendments are for?

Sen. Erbele: Most amendments come about because of a constituent issue. All session long I have been working with a constituent whose child support has been very minimal and her ex has grown his farming operation by leaps and bounds, but because of the deductions he can take on his income tax his taxes show he cannot support any more. She's raising 3 kids on \$340 a month. I've worked with the department quite a bit and it is much too large to try and come up with a bill that will work for everyone. We need to take a hard look at it in the interim and see what we can do to plug a loop hole like bank statements that could be looked at in lieu of or in addition to (dropped sentence.)

Chairman Weisz: Your intent is for the department to come to the next session (Rep. Erbele and Chairman Weisz talking at once, inaudible.)

Rep. Erbele: Yes, when they are writing the rules next time which is in the summer of 2010.

Hopefully they will have some rules in place by next session that may address the depreciation part.

Chairman Weisz: I handed out a suggested amendment. **(See attached amendment #1)**

This clarifies what can and can't be done in those cases where the employer doesn't properly code so the wrong payment goes to the wrong payee. The person who got the wrong check doesn't pay it back; then this gives the option to take legal action to get it back. If this is ok, we need a motion to accede to the Senate amendments and further amend.

Rep. Nathe: Motion to accede to Senate amendments and further amend.

Sen. Dever: Second.

Sen. Erbele: I've gotten personal letters from him as well, he's not in my district, but I've known him since we were (inaudible).

Sen. Dever: You said this is something they can do now?

Chairman Weisz: My understanding is the law would probably already provide that he could after them, but this clarifies that he has the legal ability to go after that person who improperly received the payment and don't send it back. The state doesn't have the ability to get it back as the person who got the payment erroneously doesn't owe it to the state; they owe it to the employer who sent it to them in error.

Roll Call Vote: 6 yes, 0 no, 0 absent.

MOTION CARRIED.

AMENDMENT. A new subsection to section 14-09-09.3 of the North Dakota Century Code is created and enacted as follows:

If an income payer makes an error in the remittal information it provides to the state disbursement unit, the income payer has not complied with this section and is responsible for the error, but has a cause of action for reimbursement against any person who receives funds from the disbursement unit as a result of the error and refuses to return the funds upon request.

VR
4/14/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1329

That the House accede to the Senate amendments as printed on pages 956 and 957 of the House Journal and page 739 of the Senate Journal and that House Bill No. 1329 be further amended as follows:

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 14-09-09.3 of the North Dakota Century Code, relating to the duties and liabilities of an income payer;"

Page 1, after line 3, insert:

"SECTION 1. A new subsection to section 14-09-09.3 of the North Dakota Century Code is created and enacted as follows:

If an income payer makes an error in the remittal information the income payer provides to the state disbursement unit, the income payer has not complied with this section and is responsible for the error, but has a cause of action for reimbursement against any person that receives funds from the disbursement unit as a result of the error and refuses to return the funds upon request."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1329 (, as (re)engrossed):

Date: 4-13-09

Your Conference Committee HUMAN SERVICES

For the Senate:

For the House:

ATTENDANCE

YES / NO

YES / NO

ATTENDANCE

✓	Sen. R. EBERLE	✓		Rep. R. Weisz	✓		✓
✓	Sen. D. Dever	✓		Rep. M. Nathe	✓		✓
✓	SEN. J. POMEROY	✓		Rep. T. Conklin	✓		✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 956 - 957

____, and place _____ on the Seventh order.

____, adopt (further) amendments as follows, and place 1329 on the Seventh order.

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1329 was placed on the Seventh order of business on the calendar.

DATE: 4-13-09

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Nathe

SECONDED BY: Sen. Dever

VOTE COUNT 6 YES 0 NO _____ ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1329: Your conference committee (Sens. Erbele, Dever, Pomeroy and Reps. Weisz, Nathe, Conklin) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 956-957 and place HB 1329 on the Seventh order.

That the House accede to the Senate amendments as printed on pages 956 and 957 of the House Journal and page 739 of the Senate Journal and that House Bill No. 1329 be further amended as follows:

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 14-09-09.3 of the North Dakota Century Code, relating to the duties and liabilities of an income payer;"

Page 1, after line 3, insert:

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Renumber accordingly

HB 1329 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1329

receiving the copy. Bills sent to the other parent more than 45 days after receipt need not be paid. In the event that either parent gets a reimbursed by insurance or rebates for medical costs that had been previously paid by the other parent, that parent shall forward the rebate or insurance coverage to the paying parent.

The children are 11 years old. It appears that one of the children has asthma and needs prescription medication. The parents MUST send any prescription drugs with the child or children for visitation and each parent shall be responsible to see that the prescription medication is transferred with the child when the child returns to the custodial parent. Both parents are responsible, and both parents are encouraged to encourage the child to learn to be responsible for keeping track of her inhalers and asthma prescriptions as well.

Each parent shall supply whatever over the counter medicines the children need at their own expense.

OTHER EXPENSES

Each parent shall bear $\frac{1}{2}$ of the cost of dental, orthodontia or vision expenses. Each parent shall bear $\frac{1}{2}$ of the cost of a musical or band instrument that the child plays in conjunction with school activities. If the children become involved in extra curricular activities which require significant extra expense, such as a traveling sports team, the parents must each agree on how those costs will be divided and paid, if the parents cannot agree, then the parent promoting the activity shall bear the entire cost.

VISITATION

Recognizing that the parents each want to spend significant time with the children, but have not found a way to communicate effectively between them, the parents shall each participate in and successfully complete a *Parents Forever* or *Children of Divorce Class*. The court would recommend that they both attend the same session, if possible, so that they can learn communicate skills and learn to avoid pushing each other's emotional buttons.

The Court recognizes an inherent problem in the current visitation structure, in that by rotating each weekend and tossing in several school and other holidays which may or may not coincide with the weekend rotation, there are too many conflicts. The Court makes the following modifications/additions to the visitation schedule:

- Teachers Convention: Whoever did not have Labor Day with the children will have the entire teacher's convention that year, including the days off from school and the weekend.
- Veteran's Day: The parent not having Teachers Convention would have the children for Veteran's Day, which shall include the weekend and the day of celebration. Celebrating Veteran's Day is not limited solely to Veterans.
- Thanksgiving Holiday will include the adjoining weekend and shall extend from Wednesday at 5:30 until Sunday at 6 pm.
- Christmas and New Year holidays will stay the same, the court notes that it appears the Christmas Eve holiday time line extends to January 2nd, even though the other parent has the children on New Years Eve and New Years Day. The parents have not complained about this holiday, so it is apparently working for the parents and the Court will not modify it.
- Martin Luther King Holiday: Whichever parent did not have the child for New Years shall have the child for Martin Luther King Holiday Day, which shall begin on Friday at 5:30 and end on Monday at 6 pm.

- President's Day: Whichever parent did not have the child for Martin Luther King Day shall have the child for Presidents Day, which shall begin on Friday at 5:30 and end on Monday at 6 pm.
- Spring Break: Whichever parent did not have the child for President's Day weekend shall have the child for spring break, which shall include the days off of school and the adjoining weekend.
- If there are any other scheduled days off from school that result in a three day weekend, the party having the children for that weekend may simply have the children for that extra day. If other school holidays fall in the middle of the week, the children shall remain with Kerry for that day.
- Easter, Memorial Day, 4th of July and Labor Day, Mothers Day and Father's Day: there shall be no changes.
- There shall be no changes to the summer visitation.
- If a situation similar to the "play weekend" addressed at the hearing should arise again, where the children have significant attendance obligations near Kerry's home for a weekend which would otherwise be Jonathan's weekend, Jonathan has the right to swap that weekend with either the next or the prior weekend on the regular rotation schedule.

The above rotation of holidays will take precedence over all other visitation, including alternating weekends. Unless the parties agree differently, the alternating weekends shall resume after each of the above scheduled weekends. If a rotation is missed, the visitation is not automatically entitled to be made up by the parent who missed the visitation.

Each parent's extended family should plan their celebrations to coincide with the time that parent has the children, and should not expect that the other parent will make the children available for such things as grandparent visitation or birthday parties outside of the rotations.

To the extent possible, and remembering the Golden Rule, the parents will cooperate to ensure that the children get to see gravely ill family members, and attend weddings, Confirmations or First Communions, funerals, Graduations and/ or family reunions.

If this visitation schedule is not to the parents liking, the parents are encouraged to professionally mediate changes and modifications in the visitation schedule. If the parties choose not to mediate, or cannot successfully mediate, then the visitation as set forth above shall control.

TRANSPORTATION FOR VISITATION

For all visitation exchanges, unless otherwise arranged by mutual agreement of the parties, the parties shall meet at Sterling, at Tops Truck Stop. The parties shall endeavor to be at Sterling at the appointed time, but the parties are given a Court ordered grace period of 15 minutes.

FINDING OF NO CONTEMPT

The Court will not find either party in contempt of the prior judgment but admonishes the parties to comply with this order in the future in the spirit of cooperation and for the best interest of their daughters.

ATTORNEYS FEES

Each party shall bear his or her own attorneys fees.

PREPARATION OF THIRD AMENDED JUDGMENT

Jonathan's attorney shall prepare the Third Amended Judgment pursuant to this opinion.

Dated this 30th day of January, 2009.

A handwritten signature in cursive script, appearing to read "Sonna Anderson", written over a horizontal line.

Sonna M. Anderson
District Judge

cc: Kent Morrow
Theresa Cole

#1

**Testimony
House Bill 1329 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
March 4, 2009**

Chairman Lee, members of the Senate Human Services Committee, I am Paulette Oberst, Policy Administrator with the Child Support Enforcement Division of the Department of Human Services. I am here to provide neutral testimony regarding House Bill 1329.

We understand that House Bill 1329 would exclude atypical overtime wages or nonrecurring bonuses from an obligor's gross income in determining the child support amount under the guidelines. The exclusion would apply only if those overtime wages or bonuses are not within the obligor's significant influence or control.

Under House Bill 1329, North Dakota's guidelines would be consistent with guidelines in a number of other states that exclude nonrecurring overtime wages or bonuses but include overtime wages or bonuses that are regular and predictable, such as when the obligor has a history of working overtime or receiving bonuses and the overtime wages or bonuses are expected to continue in the future.

In implementing House Bill 1329, it appears that additional information would be required from the obligor to distinguish the overtime wages or bonuses from regular wages and to determine whether there is a pattern to receiving the overtime wages or bonuses. The obligor is in the best position to provide this documentation and to make the showing that the overtime wages or bonuses are atypical or nonrecurring and outside his or her significant influence or control.

Same testimony to House

It is quite possible that cases involving overtime wages or bonuses may result in fewer stipulations and more litigation. This is because the parties may disagree about whether the overtime wages or bonuses are atypical or nonrecurring and outside the obligor's significant influence or control. When there is a disagreement, the parties will turn to the court for a factual determination, as is done today under the rebuttal criteria in current law.

For cases we handle, the need for additional documentation or more court hearings will likely mean that these cases will take longer and require more staff time. However, we believe that the increased time and resources needed at the regional child support enforcement units would be modest and would be absorbed by current staff. Therefore, any fiscal impact to the taxpayers would be minimal.

Chairman Lee, this concludes my testimony. I would be happy to address any questions the committee may have.

Prepared for Senator Robert Erbele
By the North Dakota
Department of Human Services
March 9, 2009

PROPOSED AMENDMENTS TO HOUSE Bill NO. 1329

Page 1, line 2, after "guidelines" insert ", and to provide an agency directive"

Page 3, after line 10, insert:

"SECTION 2. ADMINISTRATIVE RULEMAKING – ADDITIONAL REBUTTAL CRITERIA. As part of the first rulemaking commenced under section 14-09-09.7 after the effective date of this Act, the Department of Human Services must adopt a new criteria for rebutting the presumptively correct amount of support determined under the child support guidelines based on the increased ability of an obligor, whose income is decreased based on depreciation, to provide child support.

Renumber accordingly



Child Support Enforcement

MEMORANDUM

Date: March 9, 2009
To: File
From: James C. Fleming, Deputy Director/Chief Legal Counsel
Re: Child Support Overpayments

This memo describes the processes currently used by the Department of Human Services to resolve overpayments of child support.

Cause of Overpayments. There are three predominant causes of child support overpayments – retroactive downward modifications, retroactive changes in custody, and crediting for social security dependent's benefits. There are other rarer causes of overpayments, such as credit for money paid directly between the parents rather than the SDU or payments made in other jurisdictions, but those overpayments are sufficiently rare to be outside the scope of this memo.

Retroactive Downward Modifications.

Assume the following scenario:

A motion is filed to reduce an obligor's monthly obligation from \$500 to \$400 based on an alleged reduction in income. During the two months when the motion is pending, the obligor continues to pay \$500 per month, since that is what the current order requires. Ultimately, the court grants the motion to reduce support. Per ND Supreme Court decision, the change takes effect retroactively to the date of the motion, unless the court specifies otherwise. This creates a \$200 overpayment (\$100 per month for two months that the motion is pending).

The first question in the scenario above is whether the support is assigned; if so, the Department has the money and refunds the overpayment to the obligor. If the support is not assigned and the money has already been paid to the custodial parent, the court is asked for direction on whether 1) the \$400 that is due for the first month after the motion is granted should be immediately reduced by the \$200 overpayment (with

income withholding issued at the lesser amount); 2) the ongoing \$400 obligation is reduced by a percentage set by the court (often 20% of the current obligation, or \$80 in the above scenario) until the overpayment is eliminated; or 3) the court can decide that the overpayment will be resolved between the parties privately with no affect on the ongoing support obligation). This decision is left to the court based on its view of the best interests of the child.

Retroactive Change in Custody

Assume the following scenario:

Mom has custody of the child and gets a new job in a different town. The child wants to stay in town to finish the last 2 years of high school, and moves in with Dad. After 4 months, during which Dad's \$250 monthly support obligation continues to accrue (and be paid) even though the child resides with him, a motion for change in custody is filed. After an additional 2 months, the motion is granted. Per ND Supreme Court decision, the termination of Dad's child support takes effect retroactively to the date the child changed residence, which was six months ago (this is not viewed as a prohibited retroactive change in the obligation because the Mom was on notice that the obligation may stop) . A child support obligation is established against Mom for \$200 per month, retroactive for six months. Dad now has a \$1500 overpayment (6 months at \$250) and Mom has an arrearage of \$1200 (6 months at \$200). None of the payments were assigned. Dad also has an arrears balance to Mom of \$500 that was due before the child started to live with him.

The overpayment is first applied to Dad's remaining arrearage, which eliminates the \$500 arrears and draws down the credit balance to \$1000. Dad is informed that he may have a claim against Mom for the excess funds.

The Department has not stepped in to advance the \$1000 to Dad for several reasons.

- In many cases when the parents are cooperating, Mom received the child support payment from Dad and returned the funds to Dad.
- During the 4 months after the initial change in residence, and often for the additional two months that the motion was pending, the Department was required to enforce the existing court order, whether or not it knew of the change in residence, and disburse the funds to Mom within 2 business days.
- The Department is not liable for the overpayment because it did not act negligently and, as a general rule, it is illegal for public funds to be paid as a gift to a private individual.
- If the Department was to advance public funds to the obligor, it would then be required to expend additional funds to attempt to recover the overpayment from the custodial parent, even though the Department originally disbursed the funds based on the binding court order that was in effect at the time.

- There is no legal authority (or available federal reimbursement) to add the overpayment to Mom's arrearage and collect the amount due as "child support."

Crediting for Social Security Dependent's Benefits

If an obligor is disabled and receiving benefits from the Social Security Administration, any minor children of the obligor are eligible for a benefit payment as well, even if the child lives in a different household from the obligor. Often, it can take many months before an obligor is initially determined to be eligible for benefits.

The value of the benefit paid to the minor child is considered income to the obligor for purposes of determining the appropriate obligation under the child support guidelines. However, the child support guidelines include the following provision:

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.

North Dakota Administrative Code § 75-02-04.1-02(11). In other words, after including the value of the dependent's benefit as income to the obligor, the obligor receives a dollar-for-dollar credit against his or her obligation for the amount of the benefit.

In 2004, the Department requested and obtained an opinion from the Attorney General concluding that a court order was not required before giving the credit, as long as there is sufficient documentation from the obligor or an agreement between the parents on the dates and amounts of benefits paid.

<http://www.ag.nd.gov/Opinions/2004/Letter/2004-L-24.pdf>

Assume the following scenario:

Dad owes monthly child support in the amount of \$168 for one child. He becomes disabled and submits a claim to the Social Security Administration. Ten months later, the claim is approved and the child begins receiving \$200 per month, along with \$2,000 to reflect the ten months that the claim was pending. An additional 2 months pass before Dad provides documentation regarding the benefits to the Department. During those 12 months, the obligor was able to pay \$50 of the monthly obligation, and thus owes arrears for those 12 months of \$1,416 (\$118 monthly shortfall in payments for 12 months). After crediting Dad for the \$2000 received by the child retroactively for the 10 months it took to process the claim, plus \$400 for benefits received during the additional 2 months that passed before the obligor provided the necessary documentation to child support, Dad has overpaid by \$984 (\$2016 owed - \$2400 credit - \$600 actual

payment). Dad also has an arrears balance to Mom of \$250 that was due before he became disabled.

The Attorney General's opinion guides the Department's response to this situation. First, the credit balance is applied to the arrearage. The \$704 remaining overpayment in the scenario above is refunded if the Department retained the money. If the money was disbursed to Mom, a court order cannot be sought to apply the money to future month's child support because the ongoing amount of \$168 is already being satisfied through the \$200 benefit that the child receives each month. Therefore, Dad is informed that he may have a claim against Mom for the excess funds.

The Department does not advance the overpayment for the same reasons listed on the bottom of page 2 and top of page 3 of this memo.

Court orders regarding dependent's benefits are not always clear. For example, assume that a court order establishes an obligation for Dad for \$525 per month and then subtracts the monthly \$300 that the child is receiving in dependent's benefits at the time that the order is entered. The court then indicates that Dad must pay a "net" amount of \$225 each month. However, as each calendar year passes, the actual benefit received by the child from Social Security is adjusted upward for inflation. If the "net" amount ordered by the court is enforced, then Dad must pay \$200 each month in addition to the credit, and no overpayment exists under the order. However, if Dad is provided full credit for the increased benefit payments, a significant overpayment can accumulate. In addition, since Social Security payments do not flow through the SDU, the Department cannot provide the additional credit to Dad until he provides documentation of the increased benefit amount.

The Department is not in a position to know whether Mom refrained from seeking a review of Dad's obligation over those years because the amount received was increased each year through the inflation adjustments to the dependent's benefit. In addition, Dad is in a position to know, or find out, the combined value of the benefit each year and the payments he actually made. Thus, the Department does not take a position on whether an overpayment exists, or advance the potential overpayment to the Dad and try to recoup the funds from Mom. Instead, the Department advises Dad that he may have a claim against Mom for the overpayment.

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Jerome Volk,)
)
Plaintiff,)
)
v)
)
Cynthia Volk,)
)
Defendant.)
.....)

ORDER
Case No. 93-C-1810

The plaintiff filed a motion seeking to reduce his child support obligation, to require the defendant to pay one-half of his transportation costs when he exercises visitation, and to increase summer visitation from thirty days to sixty days. The defendant filed motions to require the plaintiff to pay nondeductible medical expenses for the children, to require the plaintiff to turn over 25% of the lump sum payment he received from Social Security, and to require the plaintiff to pay the defendant a portion of his National Guard retirement. I addressed the issue of the National Guard retirement at the hearing, and that Motion is denied for the reasons stated on the record.

Child Support obligation

The evidence is that the plaintiff receives \$723 per month in Social Security disability benefits, \$722 from Worker's Compensation, and \$325 in rental fees from a duplex. This is a total of \$1,770. There are no deductions. Application of the child support guidelines results in an obligation of \$526 per month. The plaintiff claims he is entitled to a credit of \$300 per month for Social Security payments made to the children on account of his disability. *Guthmiller v. Guthmiller*, 448 N.W.2d 643 (N.D. 1989) supports the plaintiff's argument.

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Clerk of Crt. Burleigh Co.

Therefore, the plaintiff's child support obligation is reduced by the \$300 per month the children get, leaving an obligation of \$226 per month. This obligation commences as of April 1, 1998 based on the date the motion was filed. The children (not the defendant) are also entitled to a portion of the lump sum payment. Neither party advance a reason why 25% is or is not an equitable portion, however I find that it is a fair portion of the lump sum, therefore the plaintiff will pay \$1,258.16 to the defendant for the children's benefit. This payment will be made within 60 days of the date of this Order.

Visitation and medical bills

The remaining issues all require the moving party to establish a significant change in circumstances. Neither party did so, therefore the Motions on the remaining issues are DENIED.

Dated at Bismarck, North Dakota, this 13 day of May, 1998.

BY THE COURT:



Bruce B. Haskell, District Judge
South Central Judicial District