

2009 HOUSE JUDICIARY

HB 1467

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1467

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/27/09

Recorder Job Number: 7929

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1467.

Rep. Dwight Wrangham: Sponsor, support (attachment).

Rep. Zaiser: When was the last time the fee was changed to \$25.00.

Rep. Dwight Wrangham: I understand that this fee was changed in 2005.

Rep. Wolf: Do you know when money is withheld for child support, are there fees charged for that.

Rep. Dwight Wrangham: I don't know.

Rep. Wolf: The fee that is charged, basically in the end will be added to the defendant's debt, correct?

Rep. Dwight Wrangham: That is not my understanding. That's a question I have asked and I have been told that the fee is paid by the plaintiff, the creditor who is trying to collect the debt. If they have recourse back to the person who owes the debt, I'm not aware of that, if that's the case, if the fee ends up being paid by the defendant, the individual owing the debt, then I would vote "no" on the bill.

Rep. Delmore: Is it possible to get a breakdown why such a significant increase that is a three-fold increase in what is charged. I need a breakdown on why it takes so much more time, etc.

Rep. Dwight Wrangham: I will pass that on.

Rep. Klemin: Isn't it also true that the employer has to go through a certain amount of time to fill out the affidavit, the disclosure that the employer has to do in the beginning, before he starts doing all the extra accounting every month. So part of the cost is the time it takes to do the affidavit and disclosure.

Rep. Dwight Wrangham: I understand that the \$25 probably doesn't even cover the cost of that original disclosure statement which you are referring to. Maybe some of the larger businesses have software that can handle all of this; but in the small and medium size employers, use software to handle their payroll, but the software is not equipped to handle this, they have to fill out by hand.

Rep. Zaiser: In addition to the breakdown of the costs, I was wondering if you could also establish the amount or estimate on the amount of time that it takes to fill out this garnishment form.

Rep. Dwight Wrangham: Sure.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Kim Granfor, ND Collectors Association: Opposed (attachment).

Rep. Koppelman: The fee of \$25 is paid to the employer.

Kim Granfor: Yes.

Rep. Koppelman: That fee is then passed on to the defendant (the employee).

Kim Granfor: Yes. That is the retention amount that the employer gets to keep.

Rep. Koppelman: The reason that occurs is to make the creditor whole; to say that the extra cost of collection is due from the defendant.

Kim Granfor: Yes.

Chairman DeKrey: Thank you. Further testimony in opposition.

Bryan Dvirnak, President, Collection Center, Inc.: Opposed (attachment).

Rep. Kretschmar: Do you think that the fee should be raised at all.

Bryan Dvirnak: No.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1467

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 7965

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at HB 1467. What are the committee's wishes.

Rep. Delmore: I move a Do Not Pass.

Rep. Griffin: Second.

11 YES 0 NO 2 ABSENT

DO NOT PASS

CARRIER: Rep. Griffin

FISCAL NOTE
Requested by Legislative Council
01/23/2009

REVISION

Bill/Resolution No.: HB 1467

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$14,100	\$0	\$14,100	\$0
Expenditures	\$0	\$0	\$5,000	\$17,000	\$5,000	\$17,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1467 changes the fees related to garnishment proceedings, increasing general fund revenues and expenditures, as well as federal fund expenditures.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill increases the fee for filing an affidavit of disclosure from \$25 to \$75, increasing general fund revenue by \$14,100 for the 2009-11 biennium. Section 2 of the bill increases the fee for filing an affidavit of disclosure from \$25 to \$75, increasing federal fund expenditures by \$17,00 and general fund expenditures by \$5,000 for the 2009-11 biennium.

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.*

HB 1467 is expected to increase the general fund by an estimated \$9,100 in the 2009-11 biennium and increase expenditures in federal funds by \$17,000 in the 2009-11 biennium.

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

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Toby Mertz	Agency:	OMB
Phone Number:	328-4885	Date Prepared:	01/20/2009

FISCAL NOTE
Requested by Legislative Council
01/20/2009

Bill/Resolution No.: HB 1467

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$14,100	\$0	\$14,100	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1467 changes the fees related to garnishment proceedings, increasing general fund revenues.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 1 and 2 of the bill increases the fee for making and filing an affidavit of disclosure from \$25 to \$75, increasing general fund revenue by \$14,100 for the 2009-11 biennium.

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.*

HB 1467 is expected to increase revenues in the general fund by an estimated \$14,100 in the 2009-11 biennium.

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

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Toby Mertz	Agency:	OMB
Phone Number:	328-4885	Date Prepared:	01/20/2009

Date: 1/28/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1467

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☒ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 11 No 0

Absent 2

Floor Carrier: Rep. Griffin

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

REPORT OF STANDING COMMITTEE (410)
January 28, 2009 12:06 p.m.

Module No: HR-17-1070
Carrier: Griffin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1467: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1467 was placed on the
Eleventh order on the calendar.

2009 TESTIMONY

HB 1467

Rep Dwight Wraugham
HB 1467

HB 1467 IS A BILL TO INCREASE THE
STIPEND PAID TO EMPLOYERS ~~AND~~ TO

OFFSET THEIR COSTS IN PROCESSING &
IMPLEMENTING THE GARNISHMENT PROCESS.

WHEN A PLAINTIFF WINS A JUDGMENT &
SUCCESSFULLY FILES A GARNISHMENT PROCEDURE
AGAINST THE WAGES OF AN INDIVIDUAL -

THE EMPLOYER OF THE PERSON OWING THE
DEBT IS REQUIRED TO WITHHOLD A PORTION OF
THE INDIVIDUAL'S WAGES, USUALLY EACH PAY
PERIOD.

THE EMPLOYER THUS MUST DO EXTRA ACCOUNTING
AND MAKE ~~OUT~~ ^{EXTRA} ~~PAYMENTS~~ TO CHECKS ETC TO
COMPLY WITH THE GARNISHMENT PROCESS.

FOR THIS ^{EXTRA WORK} THE EMPLOYER IS COMPENSATED A
ONE TIME FEE OF \$25. A ONE TIME FEE
EVEN THOUGH THE EMPLOYER TAKES ON EXTRA COSTS
EACH PAY PERIOD.

THE Q. HERE IS: IS \$25 ENOUGH TO COVER THE COSTS
OF THE EMPLOYER. I DON'T THINK SO AND THINK THE
INCREASE TO \$75 IS WARRANTED.



North Dakota Collectors Association

an association of collection specialists

House Bill 1467

Kim Granfor

North Dakota Collectors Association

TESTIMONY IN OPPOSITION

Chairman DeKrey and members of the House Judiciary Committee, my name is Kim Granfor and I am speaking on behalf of the ND Collector's Association.

The ND Collector's Association urges you to oppose House Bill 1467 for the following reasons:

- The fee was increased from \$10 to \$25 in the 2005 legislative session.
- The garnishment form was simplified in 2005 to make it less cumbersome for the employers.
- Tripling the fee from \$25 - \$75 is extreme and unnecessary.
- Most garnishments are completed in less than the nine (9) month period for a garnishment.
- Once the initial disclosure form is filled out, the amount to be withheld is generally constant.
- Many payroll systems automatically calculate the withholding amount, thus not requiring any additional work for the employer.
- When an employer fills out the disclosure form and finds the employee is not garnishable, they still get to keep the fee.
- The fee to the employer is passed on to the employee, which will cause the garnishment to be extended further.

Under section 32-09.1-07, the retention amount is defined as "the sum of the amount of the judgment which remains unpaid, one hundred twenty-five dollars, and an amount equal to nine months of interest on the amount of the judgment which remains unpaid."

During the 2007 session, this committee worked on this definition and amount to be as close to actual cost as possible. Many of you were on this committee in 2007 and may recall the hearings. The \$125.00 comes from the fee to the employer (\$25) plus the fee to the sheriff for delivery of the papers to the employer and employee along with the mileage (\$100 average). If this committee finds they should recommend the passage of this bill, 32-09.1-07 would have to be changed to match the intent of your decision in 2007.

Testimony HB 1467

Chairman, Dekrey, members of the Judiciary Committee, my name is Bryan Dvirnak, President of Collection Center Inc, located in Bismarek.

I am testifying today in opposition to HB 1467 as the bill is **excessive** and **abusive**.

The focus of the debate centers around two basic questions:

- **How long does it take to complete the garnishment form?**
- **Who pays the garnishment fee?**

In 2005 the legislature increased the garnishment fee, paid to the employer, of an employee's wages being garnished, from \$10 to \$25.

The purpose of the garnishment fee is to reimburse the employer for the cost of completing and processing the garnishment of wages on an employee whose wages is being garnished.

The garnishment form is short (14 lines/blanks to complete-attached) and takes less than one minute to complete.

The garnishment of an employee's wages is good for 9 months. Assuming two pay periods in a month, the current garnishment fee of \$25 calculates to an hourly rate to the employer of \$83.33! Increasing the fee from \$25 to \$75 increases the hourly rate to \$250 per hour!

Where can I sign up to process the payroll for companies and receive a piece of the action!

The garnishment fee passed on to the employee. By increasing the reimbursement fee to the employer, from \$25 to \$75, is exploitation by the employer against their employee. It is EXCESSIVELY taking advantage of the employee by the employer.

In the last few months Wall Street has been exposed for excessive spending, fraud and bad behavior. Increasing the current reimbursement paid the employer, in my opinion, is EXCESSIVENESS, is a financial abuse, exploitive, and borders on fraud and bad behavior.

I urge the Judiciary committee to vote no on HB 1467.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF «DU50101»

COLLECTION CENTER, INC.

PLAINTIFF,

«DU80601»

«DU80609»

DEFENDANT,

«DU80605»

GARNISHEE

CIVIL #«DLCAUSE»

GARNISHMENT DISCLOSURE

I am the _____ of the garnishee and duly authorized to disclose for the garnishee.

On the _____ day of _____, «VLYEAR», the time of service of Garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

1. EARNINGS. For the purpose of garnishment, "earnings" means compensation payable for personal service whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependant child. "Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.
2. Adverse interest and setoff. Any setoff, defense, lien, or claim by the garnishee or other persons by reason of ownership or interest in the defendant's property. You must state the name and address and the nature of that persons claim if known. (Any assignment of wages made by the defendant or ant indebtedness to a garnishee within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)
3. Dependent. Any family member of the defendant who is residing in the defendant's residence. (If properly claimed within ten days after receipt of the garnishee summons.)
4. Adverse interest and setoff. Any setoff, defense, lien, or claim by the garnishee or other persons by reason of ownership or interest in the defendant's property. You must state the name and address and the nature of that person's claim if known. (Any assignment of wages made by the defendant or any indebtedness to a garnishee within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)
5. Dependent. Any family member of the defendant who is residing in the defendant's residence. (If properly claimed after receipt of the garnishee summons.)

6. Earnings Worksheet:

- a. Total earnings in pay period _____
- b. Federal tax _____
- c. State tax _____
- d. FICA (social security/medicare) _____
- e. Total deductions (lines B+C+D) _____
- f. Disposable earnings (Line A less line E) _____
- g. Twenty-five percent of line F _____
- h. Minimum wage exemption
(minimum wage times forty hours times
number of weeks in pay period) _____
- i. Line F less Line H _____
- j. Line G or Line I (whichever is less) _____
- k. Dependent exemption (twenty dollars
per dependent per week, if claimed) _____
- l. Adverse interest or setoff _____
- m. Total of Lines K and L _____
- n. Line j less line m (the amount of earnings
subject to garnishment) _____

7. Total of property, earnings, and money. The garnishee shall add the total of property, earnings, and money and if this sum is ten dollars or more, the garnishee shall retain this amount, not to exceed the retention amount identified by the plaintiff in the garnishee summons.

Authorized representative of garnishee or garnishee signature

TITLE

Subscribed and sworn to before me on this _____ day of _____, «VLYEAR».

NOTARY PUBLIC

PLEASE RETURN THIS DISCLOSURE AND REMIT CHECKS TO:

«ATFIRST» «ATLAST»

«ATADDL»

«CITY» «ATSTATE» «ATZIP»

«PHONE»

CHECKS SHOULD BE MADE OUT TO COLLECTION CENTER, INC.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED
WILL BE USED FOR THAT PURPOSE.