

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1173

2005 HOUSE HUMAN SERVICES

HB 1173

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1173

House Human Services Committee

Conference Committee

Hearing Date January 11, 2005

Tape Number	Side A	Side B	Meter #
2	X		1436-6219
2		X	830-4026

Committee Clerk Signature

Minutes:

**Chairman Price** opened the hearing on HB 1173.

**Jim Fleming, Deputy Director and General Counsel State Child Support Enforcement Div. Dept. Human Services. (See Attached Testimony)**

**Chairman Price:** How do you know they sign before the lien?

**J. Fleming:** It is possible for them to do it, referring to page 7- line 28-29, they can continue to work for one payment plan, per case basis. Section 13 refers to concept for full disclosure. If we are looking for an "alleged" parent. Section 14 is unique (North Dakota) Financial Inst. Deduction Order. (FIDO). The bank charges \$3.00. This is designed to go after account without having to go through the Sheriff's dept. The main benefit to this is that we would not have to use the Sheriff.

**Chairman Price:** Is there anyone to testify in favor?

**Marilyn Foss, General Counsel ND Bankers Association. (See Attached Testimony)**

Appearing in Opposition

(MR 4700-6209)

Side B - Tape 2:

**Greg Tschider: ND Credit Union League (See attached testimony)**

Appeared not necessarily in opposition, as there are some good parts in this bill, but we, as are the bankers, do have some concerns about where we fit into this process. There was discussion previously about the right of set off, it does not go to checks that go through the account, it is common law principal that says if someone owes you money, and you owe them money, you may offset it. Which means that if the bank was owed money, that the bank/CU could access the money prior to the child support amount could be collected. As far as checks that would come in, that is an indication that the account is frozen and everything stops. All checks that that person has written will then come in as NSF. We don't have an issue with that, if that is what you want. But when ever we get a lien, we automatically freeze the account. If there are checks that are bounced, there is nothing we can do about that. In regards to fraudulent checks, we are having alterations with equipment, there usually no way that you can tell the difference. Refer to attached testimony for further information. (MR 592)

**Tim Karsky: Comm. for ND Dept. of Financial Inst. (See attached testimony)**

The Dept. of FI is currently in a law suit which concerns Section 14, collection agencies collect NSF with debit of \$25.00. ? requests written authority. Substituting checks when the original documents are not recorded, I am concerned about how to regulate the proposed system, amount of money/violation.

**Chairman Price** closed the hearing.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1173

House Human Services Committee

Conference Committee

Hearing Date January 18,2005

Tape Number	Side A	Side B	Meter #
2	x		513 - 3123

Committee Clerk Signature



Minutes:

**Chairman Price** opened discussion HB 1173.

**Rep. Porter:** We were not able to come to terms between both parties on some of the issues, so I would like to work on the ones that they did agree on first and the sheet being passed around, all parties have agreed on. Looking to page 5, line 17, after the word action and inserting the language "or in any manner agreed to by the financial institution. Page 5, line 26, remove the words "prohibits the account from being" and line 27 "closed". Line 30, after the word "may", we are deleting the "and within 15 days of being served with the notice of the lien, shall". Page 8, line 16, replacing the words "take one or more of the following actions" and inserting "deduct the amount identified in the order from" Line 17, remove the word "regarding". Remove lines 18-25. Page 8, line 27, replacing "by first class mail" and inserting the language " in a matter provided for service of a summons in a civil action." Page 9, line 2, after the word "served" put a period (.) and remove the rest of the language in that sentence. Page 9, line 3 removing that line

also. Page 9 line 4, replace "except as provided in this section" with "and". Page 9 line 5, remove the period (.) and replace with " if an account is frozen" with "except to the extent necessary to" and remove all of line 6, and remove all the words in line 7 up to the word "shall". Page 9, line 13, remove the "per deduction". Page 9, remove lines 16-19. (Number 7 is removed) The rest is just renumbering.

**Rep. Porter:** Move to accept the amendments.

**Rep. Pietsch:** Second.

**Chairman Price:** Simple answer - what do your amendments do, Rep. Porter.

**Rep. Porter:** I will defer that explanation to Mr. Fleming.

**J. Fleming:** We restored the original set off language in the code, pulled back on the FIDO concept induction order from being a combination lien/income withholding account levy, to just the levy. It will also be sent by certified mail so it doesn't get lost in the shuffle.

**Rep. Porter:** The opposition to the bill from the banks and the credit unions is gone with the adoption of the amendments.

**Rep. Weisz:** Page 5, line 17, language establishing a lien. Is this implying that you can do this in any manner you prefer. Why did that language change? I would hope this doesn't indicate that you can just slap a lien whenever you want to for whatever reason.

**J. Fleming:** The amendment talks about how we serve the lien, not when we do.. The language in this section is the same language we are proposing to the deduction order, but it says we will serve it by certified mail today, but if later on, the process is in place, instead of sending by certified mail at \$3.00 each, we can figure out a way we can agree to do something electronically. But it would not change the content or when the lien may be used.

**Rep. Weisz:** The current language doesn't indicate that. Now you say you can change how you serve just between you and the financial institution.

**Rep. Porter:** That section in the initial testimony, was the part that would allow the agency forego going through the sheriff to serve that to the bank.

**J. Fleming:** The other language would not be applicable to the sheriff.

**Rep. Weisz:** Why is it just between just you and the financial institutions.

**J. Fleming:** The obligor will also get a copy anyway, this just has to deal with the communications between the banks and us. Currently with the income withholding, that is where we got this language because we are now exploring ways for us to do the income withholding to the employers, rather than in paper.

**Rep. Weisz:** Is that not being done now?

**J. Fleming:** No one should be harmed by this, it may be easier for the bank to automate it.

**Chairman Price:** Marilyn, do you receive any other lien type requests now electronically.

**M Foss:** We do some electronic filing. We do get tax liens electronically.

**M. Foss:** If we agree to it.

(MR 1570)

Chairman Price called for voice vote. Vote unanimous.

**Rep. Porter:** If you could look at Ms. Foss's testimony previously provided. All of their concerns have been addressed except two. We didn't feel that the sub-committee should do the arbitration on those two. The first one is page 7, line 9. It removes the underscored language on line 9 & 10. That was their opposition during the initial hearing. The other is on page 9, removing the language from line 20-23. Number 8 would also be removed. (MR#1737)

I would ask that Ms. Foss explain their position on those amendments.

**M. Foss:** On page 7, it is my intention to leave the law as it is now. Both of the sections on page 9, address what happens when our institutions receive intra state collections. Federal law requires us to give full faith prior to intra state collections. That means that we have to have in ND law where it is legal for others to come into our state and collect judgments. The 1997 law set up guidelines for collecting out of state judgments. Reciprocity was set up at that time.

We object to removal of any agency or court in this process in out of state collections. We are concerned about fraud, one where we have an impostor collecting, or an impostor collecting on an impostor. We feel we have a responsibility to determine that the order we get is an authentic judgment. We feel there is a variety of possibilities for fraud in this process. Our process seems to be working now so I am not comfortable with this. On the Federal level, there is something in the works now to start collecting electronically. When that is done, then we can do the changing. But until that is finalized, we cannot agree with this. My proposed amendment is to remove Section 10 of the bill on page 7, and lines 20-23 on page 9.

**Rep. Porter:** I want to verify this. On page 7, remove line 3-10 and then on page 9, remove lines 20-23.

**Rep. Devlin:** I will move those amendments.

**Rep.. Weisz:** Second.

(MR2565)

**Voice Vote: Unanimous.**

**Rep. Porter: Move HB 1173 Do Pass as Amended.**

**Rep. Devlin:** Second

**Chairman Price:** By taking out the FIDO piece, will that change this?

**J. Fleming:** The FIDO concept is not taken out, it is just changed and scaled back, you might want to save this FN. To incorporate this program, this might be as good of a deal as you will get.

**Rep. Weisz:** On page 2, line 30 & 31, why does monthly support obligations need \$168.00?

**J. Fleming:** Much of 200 million that's owed, is older stuff. There was no breakdown by month. That \$168.00 because it is minimum wage obligor for one child.

**Rep. Weisz:** Why do we have to define it as that?

**J. Fleming:** We are running into requests from collection agencies as to how many months behind the obligor is, and with the current language being one lump sum. We had to break it down.

**Vote:** 11-0-1

**Carrier:** Rep. Kaldor

(MR#- 3123)

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/24/2005

Amendment to: HB 1173

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues					\$18,055	
Expenditures			\$9,301		\$18,055	
Appropriations			\$9,301		\$18,055	

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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 creates an "arrears registry" to consolidate the trigger points for liens, executions, license suspensions, and public disclosure so all 4 tools become available at the same time.

The bill also creates a new tool known as a Financial Institution Deduction Order (FIDO) that combines liens, executions, and income withholding in one form to use for bank accounts.

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 \$18,055 for the 2005-07 biennium which is 66% of the expenditures that will be 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 increased operating costs of \$27,356 for computer system programming changes to implement the changes contained in this bill.

The "arrears registry" changes would amount to \$19,976 of which \$6,792 would be from the general fund and \$13,184 would be from federal funds.

The FIDO changes would amount to \$7,380 of which \$2,509 would be from the general fund and \$4,871 would be from federal funds.

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 would need additional appropriation authority of \$27,356 to accomplish the projects contained in this bill. Of that total \$9,301 would be general fund appropriation authority and \$18,055 would be federal funds appropriation authority.

**Name:** Brenda M. Weisz  
**Phone Number:** 328-2397

**Agency:** DHS  
**Date Prepared:** 01/25/2005

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/03/2005

Bill/Resolution No.: HB 1173

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>					\$18,055	
<b>Expenditures</b>			\$9,301	\$18,055		
<b>Appropriations</b>			\$9,301	\$18,055		

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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The Department would need additional appropriation authority of \$27,356 to accomplish the projects contained in this bill. Of that total \$9,301 would be general fund appropriation authority and \$18,055 would be federal funds appropriation authority.

**Name:** Brenda M. Weisz

**Agency:** DHS

**Phone Number:** 328-2397

**Date Prepared:** 01/07/2005

Date: 1/18/05  
 Roll Call Vote #:  
 1: 12-0-0 amend  
 2: 11-1-0-

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB ~~1173~~ 1173

House Human Services

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as amend Referred to approp.*

Motion Made By *Rep Porter* Seconded By *Rep Devlin*

Representatives	<i>Am</i>	Yes	No	Representatives	<i>Am</i>	Yes	No
Chairman Price		/		Rep.L. Kaldor	/	✓	
Rep.. Kreidt		/		Rep.L. Potter	<del>=</del>	<del>AB</del>	
Rep.. Peitsch		/		Rep.S. Sandvig	/	✓	
Rep. Nelson		/					
Rep..Devlin		/					
Rep. Porter		/					
Rep.Uglen		/					
Rep.Damschen	-	/					
Rep.R. Weisz	✓	/					

Total (Yes) *11* No *0* 0

Absent *1*

Floor Assignment *Rep Kaldor*

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

*attached:  
 pg 1  
 waiting for m. Jasi's*

*[Signature]*

REPORT OF STANDING COMMITTEE

HB 1173: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (11 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1173 was rereferred to the Appropriations Committee.

Page 1, line 4, after the fifth comma insert "and" and remove "and 35-34-12,"

Page 5, line 17, after "action" insert "or in any other manner agreed to by the financial institution"

Page 5, line 26, overstrike the comma and remove "prohibits the account from being"

Page 5, line 27, remove "closed,"

Page 5, line 30, remove ", and within fifteen days of being served with the notice of the lien shall,"

Page 7, remove lines 3 through 10

Page 8, line 16, replace "take one or more of the following actions" with "deduct the amount identified in the order from"

Page 8, line 17, remove "regarding" and replace the underscored colon with an underscored period

Page 8, remove lines 18 through 25

Page 8, line 27, replace "by first-class mail" with "in the manner provided for service of a summons in a civil action"

Page 9, line 2, replace "and on any future date or interval as directed in the order, together with a" with an underscored period

Page 9, remove line 3

Page 9, line 4, replace "Except as provided in this section, an" with "An"

Page 9, line 5, replace ". If an account is frozen" with ". except to the extent necessary to"

Page 9, remove line 6

Page 9, line 7, remove "served with the order shall,"

Page 9, line 13, remove "per deduction"

Page 9, remove lines 16 through 23

Page 9, line 24, replace "9," with "7,"

Renumber accordingly

2005 HOUSE APPROPRIATIONS

HB 1173

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1173  
Provides for an Arrears Registry

House Appropriations Committee  
Human Resources Division

Hearing Date: 2-2-05 Wednesday p.m.

Tape Number	Side A	Side B	Meter #
III	X		18.4 - 26

Committee Clerk Signature

*Diane M. Ouelly*

Minutes:

**Chairman Delzer** called the meeting to order on HB 1173.

**Rep. Lee Kaldor, District 20:** HB 1173 provides for an Arrearage Registry as a tool. It attempts to bring uniformity to all collection tools and timelines in order to help the caseworkers manage their caseloads more effectively. Section two: gives a better chance to get the obligors to pay if they are gotten to sooner in the arrearage payment process. The arrearage registry provision goes through section four.

**Chairman Delzer:** I see this arrearages in lump sum payments. Will it be a problem if someone owes \$500 in monthly payments and wants to pay double the amount?

**Rep. Kaldor:** That might be. Ask the department when they come.

Page 2

Human Resources Division

Bill/Resolution Number HB 1173

Hearing Date: 2-2-05

Section five: deals with the liens for past due child support and shows what is listed on the Registry; Section six: deals with how the liens are handled. Contentious because the financial institutions were uncomfortable with the language.

**Chairman Delzer:** If we get an engrossed bill, will you be here tomorrow?

**Rep. Kaldor:** Yes.

**Chairman Delzer:** If we make minor changes, will you be comfortable carrying the bill to the floor?

**Rep. Kaldor:** Yes.

**Rep. Metcalf:** Will we be making comments on just the fiscal part of the bill?

**Chairman Delzer:** We want to be careful not to change it, but if there is a major change that should be sought, we should speak up. We are all elected officials and so can give input. But we try to respect the work that has already been done on a bill. We stand in recess until 8:30 a.m. tomorrow.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1173  
Provides for an Arrears Registry

House Appropriations Committee  
Human Resources Division

Hearing Date: 2-3-05 Thursday a.m.

Tape Number	Side A	Side B	Meter #
II	X		2.3 - 25.4

Committee Clerk Signature



Minutes: **Chairman Delzer** called the meeting to order on HB 1173 and reviewed fiscal note first.

**James Fleming, Deputy Director of the Child Support Enforcement Agency:** The bill is about managing statewide arrears. We have to wait six months before we go after their corvette, for example, to collect arrears. Basically if the obligor is on the arrears registry, then all the tools will be in place at one time so the caseworkers can proceed without delays; 42% of obligors owe 4%, 14% of obligors owe 6% of total (i.e. one third of obligors owing arrears). This bill moves everyone up to same time-frame of two months.

**Chairman Delzer:** Two months is not very long.

**Fleming:** For unwillful obligors, two months is sufficient. We will leave obligors along as long as they are working with us. Section two: the notice requirement goes from \$1,000 to \$500. The nonrecurring bonuses such as by Marvin Windows. If the obligor is behind, half of the bonus can be garnished for child support payment instead of it being used for vacations, etc.

Page 2

Human Resources Division

Bill/Resolution Number 1173

Hearing Date: 2-3-05 Thursday a.m.

**Chairman Delzer:** Why did you use "may release?" Shouldn't it be "shall release?"

**Fleming:** With line 10, page six, the banking authorities wanted it.

**Chairman Delzer:** We are done with formal comments. We never see anything in these bills about the good parents.

**Fleming:** We are trying to be a neutral third party. For example, SB 2288 allows obligors to pay us without federal employee withholding.

**Mike Schwindt, Child Support Enforcement Director with the Department of Human**

**Services:** We think over the long haul it is going to be better for the obligors and for the kids and for taxpayers as well. We need to get the overstated obligations cut back to where they should have been in the first place.

**Chairman Delzer:** Is there any knowledge of courts and judges are deviating from the guidelines?

**Schwindt:** We do not know.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1173

House Appropriations Committee  
Human Resources Division

Hearing Date: 2-7-05 Monday a.m.

Tape Number	Side A	Side B	Meter #
I	X		42.7 - 44.6

Committee Clerk Signature



Minutes: **Chairman Delzer** opened discussion of HB 1173 regarding the creation of a child support arrears registry.

**Rep. Kerzman:** I move as Do Pass on HB 1173.

**Rep. Metcalf:** I second it.

**Chairman Delzer:** Clerk will take roll. Motion fails 3-3. We have two options: Take it over to full committee as Do Not Pass or Without Recommendation.

**Rep. Bellew:** I move to take HB 1173 to full committee Without Recommendation.

**Chairman Delzer:** My preference is to take it back to the full committee without recommendation.

Committee approved Without Recommendation.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1173  
Collection of Child Support

House Appropriations Full Committee

Conference Committee

Hearing Date February 9, 2005

Tape Number	Side A	Side B	Meter #
1	X		#31.4 - #48.0

Committee Clerk Signature

*Chris Alexander*

Minutes:

**Rep. Ken Svedjan, Chairman** opened the discussion on HB1173.

**Rep. Jeff Delzer** explains that this bill was not amended and comes from the subcommittee without recommendation. The bill creates an arrears registry within the system and section 2 changes the amount of money before you can take someone to court from \$1000 to \$500. It also changes the amount of time before they will go after those in arrears from whatever it is currently to 2 months. The reasoning behind this is that they think it is better to get you earlier so you are not so apt to fall behind. The fiscal effect is \$27,000 but they are not asking for any additional funding because the department believes they can find this money within their budget.

**Rep. Ken Svedjan, Chairman** mentions that there are two triggers on this bill: One, changing the dollar amount from \$1000 to \$500 and Two, changing the amount of time before they will go after someone to 2 months.

**Rep. Jeff Delzer** responded that this was correct and that the subcommittee did not go in depth into the policy section of the bill.

**Rep. Tom Brusegaard** asked what the vote was in the original policy committee.

**Rep. Ken Svedjan, Chairman** answered that the standing committee vote was 11-0 on this bill.

**Rep. Jeff Delzer** cautioned the committee that quite often on some of these policy bills, when they know its going to come before appropriations, its easy to vote for it.

**Rep. James Kerzman** moved a Do Pass motion on HB1173.

**Rep. Ralph Metcalf** seconded

**Rep. James Kerzman** explained that he supported this bill because the policy has unanimously approved this and I'm sure they looked at this closely. Another thing is to look at the millions of dollars out there in arrears and give the agency the tools that they request to get the job done, because in your own business you know that if you don't have the tools you need to do the work it is awfully tough to meet the end. Until we get these arrears under control we have to give the agency some latitude and whatever they need to get the job done. (meter Tape #1, side A, #36.0)

**Rep. Ken Svedjan, Chairman** commented that he would like to hear from those who oppose the bill, because he understands changing triggers to start going after arrears in child support, but asks what the downside to this is.

**Rep. Jeff Delzer** spoke in opposition of the bill by saying that 2 months is too quick. I know this is a policy judgment and I probably won't stand up against it on the floor, though I know I won't vote for it because 2 months is too quick and it gives them too much power. There is also the point that they have lots of ways to make the obligor pay but there is not much said about the

obligor who is trying to be a good parent and tries to recognize when they have custody, etc. I would support this in the future if they do more positive things for the obligors in this position

**Rep. Mike Timm, Vice Chairman** asked what the length of time was before they go after the child support currently.

**Rep. Jeff Delzer** answered it was 3-6 months. The intent is to get to the people faster so that they aren't in even worse shape when they do find them.

**Rep. Mike Timm, Vice Chairman** asked what things can be taken away.

**Rep. Jeff Delzer** answered that they can garnish wages, revoke their driver's license or hunting license, etc...

**Rep. Ken Svedjan, Chairman** commented that the change to the 2 months is the things that relates to the licenses issue.

**Rep. Jeff Delzer** commented that the standing committee changed this so there is an option to request that they do not automatically garnish your wages if you can work out another form of payment.

**Rep. Ken Svedjan, Chairman** commented that they mentioned once, maybe tongue-in-cheek, that every license could be taken away except an ice-fishing house license.

**Rep. Ralph Metcalf** asked that this committee ought to support the standing committee on this bill because the amount of money we are talking about is over \$500 million and we need to realize that this is not just a matter between the obligor and obligee but that it is in the end about the children involved. All the moneys they can collect are going to help the children who are involved. We should give the department all the tools that they need to get the job done.

Page 4  
House Appropriations Committee  
Bill/Resolution Number HB1173  
Hearing Date February 9, 2005

**Rep. Ken Svedjan, Chairman** called for a roll call vote on the Do Pass motion for HB1173.

Motion carried with a vote of 14 yeas, 9 nays, and 0 absences. Rep Kaldor will carry the bill to the house floor.

**Rep. Ken Svedjan, Chairman** closed discussion on HB1173.

Date: 2/7/05 MON. a.m.  
Roll Call Vote #: ①

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1173

House Appropriations - Human Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Without recommendation

Motion Made By Rep. Kerzman Seconded By Rep. Metcalf

Representatives	Yes	No	Representatives	Yes	No
Chairman Jeff Delzer		✓	Rep. James Kerzman	✓	
Vice Chairman Chet Pollert		✓	Rep. Ralph Metcalf	✓	
Rep. Larry Bellew		✓			
Rep. Alon C. Wieland	✓				

Total (Yes) 3 No 3

Absent

Floor Assignment Chairman Delzer

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

Date: February 9, 2005  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1173

House Appropriations - Full Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DO PASS

Motion Made By Rep Kerzman

Seconded By Rep Metcalf

Representatives	Yes	No	Representatives	Yes	No
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol		X
Rep. Mike Timm, Vice Chairman		X	Rep. David Monson		X
Rep. Bob Martinson	X		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer		X
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert		X
Rep. Francis J. Wald		X	Rep. Larry Bellew		X
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Gulleeson	X		Rep. James Kerzman	X	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich		X			
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson		X			

Total Yes 14 No 9

Absent 0

Floor Assignment Rep Kaldor (Human Services)

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

REPORT OF STANDING COMMITTEE (410)  
February 9, 2005 4:08 p.m.

Module No: HR-26-2350  
Carrier: Kaldor  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1173, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)  
recommends **DO PASS** (14 YEAS, 9 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1173 was placed on the Eleventh order on the calendar.

2005 SENATE HUMAN SERVICES

HB 1173

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1173

Senate Human Services Committee

Conference Committee

Hearing Date February 28, 2005

Tape Number	Side A	Side B	Meter #
1		x	890-2845
2		x	1540-2460

Committee Clerk Signature



Minutes:

Vice Chairman Dever opened the public hearing on HB 1173. All members were present.

This bill relates to collection of child support.

**Testimony in favor**

**Jim Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Division of the Department of Human Services.** See written testimony.

(Attachment 1).

**Sen. Warner:** How does this reconcile with you decision on the previous bill to not consider that a single month's missed payment would constitute arrearage?

**Fleming:** The bill you just heard (HB1172) would say that if there's a bad reason they're one month behind, we still are allowed that the clerk schedule a contempt hearing. What that allows is when you can tell, when the obligor says, yes, I recognize I missed a payment, my withholding cycles were all thrown off. Right now, there's a *duty* to schedule contempt hearing or issue a

notice of arrears, even though everyone involved understands why it happened. With that bill there's some judgment that can be used to avoid that kind of action. But, there you're talking about errors, or talking about giving administrative tools, like ours, a chance to work, before you take up the court type.

Mr. Fleming went on with his written testimony.

**Sen. Lyson:** I have to debate you a little bit on the banks. When we have court cases and so on--on execution and levies. As a sheriff, right now, and I don't think you could either, walk into a bank and say, 'does so and so work here, because I have an execution' but they can't tell you if they have an account there. So you have to levy on every bank in the city.

**Fleming:** We are regularly executing on bank accounts today using just the process you described. The bank privacy laws have exemptions for legal process served by the sheriffs or other information provided by child support.

**Sen. Lyson:** But you still have to put the execution out there--to that bank before they can even tell you they have an account there.

**Fleming:** I can believe that because the bank will want to know that you have a legal process in hand, but we would have sent the sheriff to that bank based on information that bank had already given us about their accounts.

**Sen. Lyson:** What I'm trying to get at, is that an execution from you or whatever for the sheriff to go to that bank could cost you or anyone like an attorney, \$50 an execution. It's going to have to go, say in Williston, to all nine banks to find out who's got the money in it, unless you know and we can go to that one bank. And they'll get wise to that in a hurry and they'll put it in three or four different banks.

**Fleming:** We know which one to send the sheriff to because the banks are required to do a data match with us, so we'll know the account in there. Some banks get our list and compare it with theirs, some banks give us all of their data and we match it with ours, but the only data that's retained are the matches. If you were an obligor, and you have a bank account in an account in Williston, we know about it. The data match process I described, is something that is mandated by the federal government to promote the collection of child support. You have bank privacy laws, both at the federal and state level that have been written to accommodate that mandate and allow that process to happen.

**Sen. Lyson:** I can understand if you're sending your list to the bank and they're checking it, but for the bank to send all of their lists to you, I would love to have my bank do that because I want to get rich.

**Fleming:** You're bank is probably sending your name and those of fellow depositors to our multi-state vendor, which is doing the match, and it's dumping/erasing the information that's not a match and letting us know the hits there are. We have stronger confidentiality rules on us than banks do in terms of not protecting the data. There is no way I could get into our system and identify what you have in your bank records if you're not an obligor. We don't get that data, we don't keep that data.

**Vice Chairman Dever:** Could an obligor in Williston frustrate your efforts by banking in Sidney, Montana?

**Fleming:** An obligor doing business in Williston could delay our actions by moving their account. But an account lien freezes the account so at that point they can't move it. They can go

to a bank in Sidney, Montana, but the Sidney bank is required to engage in the same data match, so we'll catch up to them.

**Vice Chairman Dever:** Across state lines?

**Fleming:** That's why it's good that it's done on a national basis. Every account holder is subject to the same process. I can't emphasize enough how careful we are with this financial information. Our vendor matches this by computer and only saves the hits, the rest of it is gone away, they have statutes and federal statutes that make it a felony to for them to do anything inappropriate with that information. The key here is, that if you have money out there that is supposed to be supporting kids, we need to match it and find it. The bill before you today is whether we're going to involve four or five extra people or whether we're going to do it directly. We think that public resources are used a lot better by being able to replicate income withholding to banks.

**Sen. Brown:** You have an amendment in your written testimony that seems to be simple housekeeping, can't legislative council take care of this without an amendment?

**Fleming:** They would have been able to make those changes when the amendment said renumber accordingly, but because they weren't done into the engrossed version, that a legislative amendment is needed.

There was no further testimony on HB 1173.

Vice Chairman Dever closed the hearing.

Chairman Lee reopened discussion on HB 1173.

The committee members worked through the wording. Chairman Lee if there were any problems with the legal side of section 3 and 4.

**Sen. Lyson:** Is the arrears registry a national thing?

**Chairmen Lee:** What's the difference between the records they have and an arrears registry?

**Sen. Lyson:** I'm guessing that the registry is what they're getting back from the national registry.

**Sen. Dever:** That's what all of Section 13 is about, isn't it?

There was general discussion about the intricacies of the bill, levies, constitutional issues. Carlee read part of the NDCC relating to levies. Senator Lyson asked Carlee to research executions of levies.

**Sen. Brown:** This bill helps the department in multi-state issues, and they're probably finding over a lot of years that if a person wants to escape paying, leaving the state is the best way to do it. They won't even try to collect on Indian reservations. I still think the legislative could do this.

Chairman Lee ended the discussion on HB 1173. No action was taken.

2005 SENATE STANDING COMMITTEE MINUTES

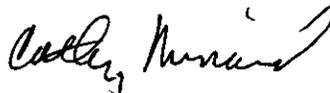
BILL/RESOLUTION NO. HB 1173

Senate Human Services Committee

Conference Committee

Hearing Date March 1, 2005

Tape Number	Side A	Side B	Meter #
1		x	2,840-4050

Committee Clerk Signature 

Minutes:

Chairman Lee reopened discussion on HB 1173. All members were present.

**Sen. Lyson:** On a monthly basis the child support unit sends a disk to all the banks in North Dakota with the names of the obligors. The bank runs it through their computer, and if there's a hit, they return the hit to the department with the name and the amount of money in the account.

**Sen. Dever:** Do they flag the account then?

**Sen. Lyson:** No, the only way they can do that...then they have to get an execution. When you get an execution, the sheriff serves that on the bank. That execution stands until a levy is issued and takes some money out of the account. If that money that comes out of the account completely satisfies that judgment, the judgment falls off, if it doesn't, it stays there, so the money is frozen in the account and then they'll levy again as soon as more money comes in. Probably the next month when they send the disk in again that they'll see there's more money in there. The problem I have with allowing them to furnish their own levies is..the sheriff gets an

execution from the court, he serves it, he has to make monthly reports to the court on what part is satisfied and what part is not and what they've done to satisfy. So that's why I don't agree with them having the levy part. You're separating two areas.

**Chairman Lee:** Would you like to go back and deal with that?

**Sen. Brown:** Section 13

**Sen. Lyson:** The problem arises when you serve the judgment. When you serve the judgment on the bank, all monies in that account are frozen. Then you have to file a levy to take the money. All the execution does is freeze the money. So once you get the levy and go there and then you take all the money in the account. You take that money and then you have to file a return now with the court and whoever the person who holds the execution--it says to report to them and say the execution has been filed, the levy's been filed, we have satisfied the judgment by 'x' amount of dollars. So now you know it didn't get satisfied completely so a levy for the execution stays in place, so if any more money is deposited in there and nobody else can take it out. The problem I have with them having the levy is how is the sheriff going to know when to return that execution and how much should he have, because it's his obligation to show how much of the execution is satisfied each time until it's satisfied completely. And sometimes, as soon as you execute, they guy won't put another penny in that bank. Then you're sitting there, they have a levy and you have an execution laying there and nobody knows who's doing what. So pretty soon, what does the sheriff do with the execution?

**Sen. Dever:** Then the obligor is running around with a bunch of cash in his pocket.

**Sen. Lyson:** The problem I have is when you do that, the sheriff has got to be able to file that levy so he knows how much is going on. It may take them five days to get the money from the

sheriff because he has to deposit it by law with the treasurer and draw a county check from that to pay that part of the execution and with that he'll get a return saying what time the execution was filed, when the levy was filed, this is the amount filed and the execution is still in effect, if not completely satisfied. But then after a time, if nothing happens, the sheriff is going to send it back saying the execution has been returned because no action with 90 days.

My bank assured me that my name was not going down to child support.

**Chairman Lee:** Until Carlee is able to get the rest of the information we're working on, maybe it would be better to wait.

Chairman Lee ended the discussion on this bill. No action was taken.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1173

Senate Human Services Committee

Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
3	X		3,321-5150

Committee Clerk Signature



Minutes:

**Chairman Lee opened the meeting to discuss HB 1173. All Senators were present.**

**Senator Lyson-** On page 8, it appears to me that child support is doing an automatic judgement if someone is in arrearage. I don't see any process that is established. Under the levy rules of civil process, I don't see how this can be done. I doubt it would go through the Supreme Court.

**Jim Fleming of the Department of Human Services-** The federal law reflected in state law is when child support is due and unpaid, it automatically becomes by operational law. The constitution applies to the rights of the obligor with the monthly payment obligation. We are dealing with a post judgement situation and not a pre-judgement situation.

**Chairman Lee-** Did you say that it is a federal rule where the arrearage becomes a judgement?

**Jim-** That is correct. It is a clear federal mandate. We have been discussing with the House on the comparison between North Dakota and South Dakota when it comes to child support. South Dakota does this through income withholding, they are corrupting the federal form in the process.

We want to do things the right way in our state. When a traditional judgement is executed by a sheriff, that is a traditional process. The other way judgements are collected is through garnishment. It is not unprecedented that we would take collection action outside of the civil process. The child support deduction order is much more similar to an income withholding order, than a levy.

**Senator Lyson-** If money is in the bank, judgements are ahead of any one else coming behind them. I'm not sure if there are federal rules that says child support goes ahead of these judgements. If a judgement has been filed with that bank by the sheriff, the judgement stays in effect. Your department cannot go ahead of that judgement in execution.

**Jim-** If the sheriff leaves the money in the account, this would allow that claim to take precedence over ours. Upon further review, the priority of the judgements are what order they preceded against the asset.

**Senator Lyson-** If that execution served in that bank has only 10% satisfied, if your judgement is after that, you are second in line.

**Jim-** The sheriff would return the execution partially satisfied under this scenario. We would get our income withholding order after that.

**Senator Lyson distributed an amendment to the bill for the committee to review. (Attachment)**

**Chairman Lee closed the meeting on HB 1173. No action was taken.**

2005 SENATE STANDING COMMITTEE MINUTES  
BILL/RESOLUTION NO. HB 1173

Senate Human Services Committee

Conference Committee

Hearing Date March 14, 2005

Tape Number	Side A	Side B	Meter #
1	x		5130-end
1		x	00-1090
2	x		4855-5725

Committee Clerk Signature



Minutes:

Chairman Lee reopened discussion on HB 1173. All members were present.

Senator Lyson moved DO NOT PASS on HB 1173, seconded by Senator Dever.

Chairman Lee: Was there anything in here we needed to salvage?

Sen. Lyson: This whole thing, as far as I'm concerned, lacks due process of law. There are things that can be done right now that...we have the registry now, and they're sending these things out to the banks. We don't need anything that says that they want the banks to send their stuff to them. What they do, is if they find a hit, they send it back and that's proper. As far as getting the judgments and executions, any attorney will tell you this isn't due process and it's a terrible situation.

Sen. Warner: I think they've already been adjudicated, though.

Sen. Lyson: No, they haven't. They've been adjudicated that they have to pay child support. But here is the situation, when you get a judgment, you've got to go to court and have some due

process to get that judgment. Here it says, if you're a match, you've got a judgement and once you get the judgment, you've got to go back to court to get an execution to serve so the sheriff can serve it on whoever the place is, either the bank of whatever. They say 'no, we don't need that we can do our own' in this. And then the sheriff has to get a levy to go get this money. But not in here, they do their own. If you want to go up to the Attorney General's office, who don't want to talk about it, they'll just shake their heads and walk away like they did to me.

Chairman Lee: I'm not sure I'm ready to throw out the idea of the arrears registry or the financial institution deduction order without a little more conversation. The fiscal note isn't an issue.

Vice Chairman Dever: Somehow, reading the fiscal note gives a better explanation than the testimony.

Chairman Lee: I got an e-mail from Barb Seigel in the department of human services indicating that there is a study resolution regarding visitation on HCR 3025.

The committee began walking through the amendment.

Sen. Lyson: Section 7 is not necessary if they're not doing their own executions and levies. If they not doing those the thing is released on payment.

Chairman Lee: But the whole bill is not them doing their own levies. I don't want to throw out the baby with the bath water.

Sen. Lyson: The whole bill is connected with the whole gamut of 'more power, more power' and I starting to get afraid of the power we're giving people. If this bill would do *anything*, to start to reduce arrearage, I have no problems with it. But arrears are going up all the time.

Chairman Lee: It would have gone up even worse if we hadn't given them the authority they've got.

Sen. Lyson: The eye of the beholder

Senator Warner asked Senator to give a background of how the sheriff's office are funded and he did this.

Chairman Lee: Nobody has come in and objected to this. I haven't been contacted by any attorney and I haven't had anybody tell me about their concerns.

Sen. Lyson: There are others who object but won't come in here and testify about child support because they don't want to get the media in here with their names all over the paper.

Chairman Lee: There was one here today and nobody asked about it and no one has whispered in my ear to talk about this.

Sen. Lyson: Fine, if you guys want to pass this thing, I'll speak to it on the floor. I feel very strongly.

Chairman Lee: I prefer to think that's not a threat, but just a statement. What I'm trying to do is see if there's parts of this bill that we may need to give additional consideration. I know you have an objection to them over what you see as the sheriff's responsibility with the levies and I respect that and I'm trying to figure out where that plugs in here, but I don't think every section of the bill is like that.

Sen. Lyson: There's more to it than just that, if you take a look at this and talk about the register and he stood right there and said that we're going to demand the banks to send them the list of people that's deposited in their banks.

Chairman Lee: No, I think.....

Sen. Lyson: That's exactly what he said and I even questioned him about it.

Chairman Lee: We want to make sure is that it's working the way it is now in which they send the disk in and the banks say 'okay, there's a match here'. I don't have any problem with that.

Sen. Lyson: Without that bill you can do that.

Chairman Lee: That's already working.

Vice Chairman Dever: I guess that's part of my concern, being able to sweep the account. I think it encourages obligors to be even less responsible with their money and not put it in the bank.

Sen. Lyson: They'll move their accounts to banks so quick that...

Chairman Lee: If somebody wants to cheat, which is what we're talking about, they'll probably figure out a way to do it. They'll put cash in a shoe box under the bed or in a coffee can in the freezer, or in a bank without that registry. But I think the state has an obligation to seek out those people who are not paying child support to their kids.

Sen. Lyson: And I think we're doing that

Chairman Lee: I have a concern about 'alleged parent' on page 7 line 25. This shouldn't be a public issue.

Chairman Lee read from the statute. Senator Warner talked about the Florida case where names were published. Chairman Lee said she wanted to visit with legislative council and talk about the areas of the bill that gave the committee concern. She also wants to talk with Rep. Price and see if the House committee had any concerns. She is concerned about the liens by child support not the sheriff; sweeping the account; obligor hiding funds; alleged parent.

Vice Chairman Dever: From an attorney's point of view, is this good policy?

Chairman Lee: The problem is that assistant attorney general from one area is not supposed to disagree with the assistant AG in another area. They're supposed to talk with Sandy or Wayne.

Sen. Brown: Are we going to leave the motion open?

The motion was left open.

Chairman Lee reopened the discussion on HB 1173. All members were present.

Chairman Lee: I haven't heard from the Attorney General's office about our questions. Mr. Fleming, would you like to answer our 'alleged parent' question? On 1173, you talked about publicizing information about a parent of an alleged parent. We're not totally comfortable with 'alleged parent.'

Mr. Fleming explained the reasons his department used public disclosure: to find someone who owes or is owed money or to find a parent who is unaware of the paternity. But we don't use those people on the web site because paternity hasn't been proven so they're called 'alleged parent'

Chairman Lee: That makes us a little uncomfortable.

Sen. Lyson: What happens if the woman just wants to get even with someone? Then we're publicizing that.

Sen. Warner: She'd be subject to slander, wouldn't she?

Chairman Lee: Yes, if he wasn't the father. Do you have to have the permission of the custodial parent, don't you, to put the obligor on the web site?

Fleming: No, you would not. The permission requirement attaches if its on a wanted poster where it actually reveals information about the obligation. The consent is required for that. If it's used for collection reason, that's attached. But it's a locate reason only the information we disclose is different. It doesn't say 'this person is a defendant in an attorney action, help us find

him' It just says, ' child support is looking for this individual' which could mean any number of things.

Sen. Warner: Does this fit into the data match, the financial institutions disclosure? I can't imagine why any one would go on a web site for child support and actually spend hours going through it seeing if there's anyone there they knew.

Fleming: I don't know why they would do that either. It's certainly not the major use for the list. We put people on the locate list that we're looking for and we thought, for consistency, it would make sense to have everybody on the locate list on the web site. In terms of the data match, I would have to check. Barb, do we do data match with just obligors or anybody we're looking for?

Barb Siegel, State Child Support Office: This has been debated on the federal level about what that match can be used for. There are quite a few states who are submitting their entire data base. We have gotten less into the custodial parent locator some states have. We can do data match on alleged fathers. With finding alleged fathers, at this point, we do use a whole host of locate tools. This was one that did not extend statutorily to include alleged fathers and I know one of our problems with...we have no support...if we don't establish paternity, you can't go on to establish child support obligations. We have thousands of cases sitting out there without any child support orders because we aren't able to find the alleged father. Mike feels that this could be one more good tool to try to get the children some support.

Sen. Lyson: This thing just bothers me because how many Don Larson's do we have in North Dakota, or Jim Johnson's.

Chairman Lee: There are identifiers involved with those.

Page 7

Senate Human Services Committee

Bill/Resolution Number HB 1173

Hearing Date March 14, 2005

Sen. Lyson: There are?

Chairman Lee: Yes, it isn't that every Don Larson....but the other information makes that particular one the one being sought.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1173

Senate Human Services Committee

Conference Committee

Hearing Date March 15, 2005

Tape Number	Side A	Side B	Meter #
1	X		3,900-5730

Committee Clerk Signature



Minutes: **Chairman Lee opened the meeting to discuss House Bill 1173. All Senators were present.**

Action taken:

**Senator Lyson made a Do Not Pass recommendation for the bill. Seconded by Senator Dever.**

Discussion:

**Chairman Lee** distributed information from the Attorney General's office to the committee. See attachment from Sandi Tabor. Their office does not see a problem with any of the due process work.

**Senator Lyson-** We have a procedure in place right now that works a lot better, I don't see any point to change the process by getting money from banks. The Attorney General's office did not say they were entirely pleased with the bill.

**Senator Warner-** This initiative did not come out of the Attorney General's office, just something to keep in mind. Its their job to be neutral on legislation of this sort.

**The vote on the Do Not Pass recommendation was 2-3-0. Motion failed.**

**Senator Lyson made a Do Pass recommendation on the amendment (0201). Seconded by Senator Dever.**

**Senator Lyson-** The states attorney would be neutral in this case, there would be no conflict of interest to do this.

**Chairman Lee-** It is a 180 degree reversal on what has been emphasized in previous sessions. Visitation and child support payments cannot be connected. An obligor can't make an excuse for not making payments because visitation has not occurred. There are a lot of circumstances where visitation is very complex.

**Senator Lyson-** If we are going to be proactive with this and keep the funding in place. This would make sure both people are following rules set forth in the divorce decree in court.

**The vote was 2-3-0, with the motion on the amendments failing.**

Action:

**Senator Brown made a Do Pass recommendation on an amendment. See attached.**

**Seconded by Senator Dever. The vote was 5-0-0, with the amendments passing.**

**Senator Brown made a Do Pass as Amended recommendation and to re-refer it to Appropriations. Seconded by Senator Warner.**

Discussion:

**Senator Lyson-** This is a bad bill, we should vote against this.

**The vote on the HB 1173 as amended passed with a 3-2-0 vote.**

Page 3  
Senate Human Services Committee  
Bill/Resolution Number HB 1173  
Hearing Date March 15, 2005

**Senator Brown will be the carrier of the bill.**

**Chairman Lee closed the meeting on HB 1173.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1173**

**Senate Human Services Committee**

Conference Committee

Hearing Date March 22, 2005

Tape Number

1

Side A

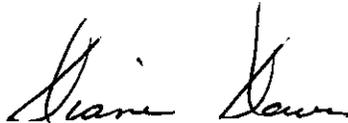
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Side B

Meter #

0-598

Committee Clerk Signature



**Relating to collection of child support.**

**Chairman J. Lee opens hearing on HB 1173.**

Committee work

**Senator Lee** - Said they have gotten some conflicting information about execution and due process. The summary is that they can already do what is in there by going through the Sheriff and the process of notice was very important..

**Senator Lyson** - Said that Julie in the AG's office has researched this and determined that this probably isn't the way to go, by not giving proper notification to the plaintiff.

**Senator Lee** - Said they are not telling us as a matter of policy what to do because that is our decision, but they are saying they, the Child Enforcement Unit is able to do everything that is in there right now but this would add it the right to give notice to the debtor. They are not saying

this is a good bill or a bad bill or that we should change the policy necessarily. She said she wants to know if due process is being violated here. They wanted us to know that there is no notice given to the debtor. If we pass this they can give the notice directly.

**Senator Warner** - Had a question on service fees. Is it the department or come out of the collections.

**Senator Lyson** - Said he could answer that, it all has to done through the court for this fee to be free and the court adds that in.

**Senator Lee** - Said they are not suggesting an amendment, all their suppose to tell us is what the law is now and what would this law do. This is a due process issue.

**Senator Brown** - Thought we should get this back to Legislative Council.

**Senator Lee** - Said the lack of notice was brought to her attention. She said she will let appropriations know that there might be an issue this committee would like to address but they should still hear it.

(meter #598)

End

Date: 3-14-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1173

Senate Human Services

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do not Pass*

Motion Made By *Sen Lyson* Seconded By *Sen. Deaver*

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman			Sen. John Warner		
Sen. Dick Dever - Vice Chairman					
Sen. Richard Brown					
Sen. Stanley Lyson					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*left open*

Date: 3-15-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1173

Senate Human Services

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do not Pass*

Motion Made By *Sen Lyson*

Seconded By *Sen. Dever*

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman		✓	Sen. John Warner		✓
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown		✓			
Sen. Stanley Lyson	✓				

Total (Yes) 2 No 3

Absent  $\phi$

Floor Assignment

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

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1173

Page 1, line 3, replace the first "section" with "sections 11-16-01 and"

Page 1, line 6, after "to" insert "enforcement of visitation orders and"

Page 1, after line 7, insert:

**"SECTION 1. AMENDMENT.** Section 11-16-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-16-01. Duties of the state's attorney.** The state's attorney is the public prosecutor, and shall:

1. Attend the district court and conduct on behalf of the state all prosecutions for public offenses.
2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when the state's attorney has information that such offenses have been committed, and for that purpose, when the state's attorney is not engaged in criminal proceedings in the district court, the state's attorney shall attend upon the magistrates in cases of arrests when required by them except in cases of assault and battery and petit larceny.
3. Attend before, and give advice to, the grand jury whenever cases are presented to it for consideration.
4. Draw all indictments and informations.
5. Defend all suits brought against the state or against the county.
6. Prosecute all bonds forfeited in the courts of record of the county and prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or to the county.
7. Deliver duplicate receipts for money or property received in the state's attorney's official capacity and file copies thereof with the county auditor.
8. On the first Monday of January, April, July, and October in each year, file with the county auditor an account, verified by the state's attorney's oath, of all money received by the state's attorney in an official capacity in the preceding three months, and at the same time, pay it over to the county treasurer.
9. Give, when required and without fee, the state's attorney's opinion in writing to the county, district, township, and school district officers on matters relating to the duties of their respective offices.
10. Keep a register of all official business in which must be entered a note of each action, whether civil or criminal, prosecuted officially, and of the proceedings therein.
11. Repealed by S.L. 1945, ch. 161, § 1.

- ~~12.~~ Act as legal adviser of the board of county commissioners, attend the meetings thereof when required, and oppose all claims and actions presented against the county which are unjust or illegal.
- ~~13.~~ 12. Institute an action in the name of the county to recover any money paid upon the order of the board of county commissioners without authority of law as salary, fee, or for any other purpose, or any money paid on a warrant drawn by any officer to that officer's own order or in favor of any other person without authorization by the board of county commissioners or by law.
- ~~14.~~ 13. Institute an action in the name of the county to restrain the payment of any money described in any order or warrant of the kind described in subsection ~~13~~ 12 when the state's attorney secures knowledge of such order or warrant before the money is paid thereon.
- ~~15.~~ 14. Assist the district court in behalf of the recipient of payments for child support or spousal support combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments.
- ~~16.~~ 15. Institute proceedings under chapter 25-03.1 if there is probable cause to believe that the subject of a petition for involuntary commitment is a person requiring treatment.
16. Assist the district court on behalf of a child support obligor who seeks enforcement of court-ordered child visitation in a proceeding instituted to enforce or amend a child support order or decree.

The state's attorney shall not require any order of the board of county commissioners to institute an action under subsection 12 or 13 or 14."

Renumber accordingly

Date: 3-15-05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1173

Senate Human Services

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass amendment 58216. 0201

Motion Made By Sen Lyson Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman		✓	Sen. John Warner		✓
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown		✓			
Sen. Stanley Lyson	✓				

Total (Yes) 3 No 2

Absent 0

Floor Assignment

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

**Proposed Amendments to HB 1173**

Page 1, line 12, replace "11" with "10"

Page 6, line 29, replace "14" with "13"

Page 7, line 25, remove "or alleged parent"

Renumber accordingly

*Carlee* 3/15/05

Date: 3-15-05  
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1173

Senate Human Services

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass amendment

Motion Made By Sen Brown

Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment

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

Date: 3-15-05  
Roll Call Vote #: 4

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1173

Senate Human Services

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as amended*

Motion Made By *Sen. Brown* Seconded By *Sen. Warner*

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman		✓			
Sen. Richard Brown	✓				
Sen. Stanley Lyson		✓			

Total (Yes) 3 No 2

Absent *0*

Floor Assignment *Sen. Brown*

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

*re-refr to approve*

REPORT OF STANDING COMMITTEE (410)  
March 16, 2005 8:30 a.m.

Module No: SR-48-5108  
Carrier: Brown  
Insert LC: 58216.0202 Title: .0300

**REPORT OF STANDING COMMITTEE**

HB 1173, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (3 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1173 was placed on the Sixth order on the calendar.

Page 1, line 12, replace "11" with "10"

Page 6, line 29, replace "14" with "13"

Page 7, line 25, remove "or alleged parent"

Renumber accordingly

2005 SENATE APPROPRIATIONS

HB 1173

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1173

Senate Appropriations Committee

Conference Committee

Hearing Date March 22, 2005

Tape Number

1

Side A

Side B

b

Meter #

46

Committee Clerk Signature



Minutes:

**Chairman Holmberg** opened the hearing on HB 1173.

**Senator Judy Lee, District 13, West Fargo**, distributed written testimony and testified in support of HB 1173. Indicated she just came from the Human Services Committee and just this morning visited with the Attorney General about a concern that Senator Lyson had raised about due process about allowing the child support enforcement unit to take that responsibility. We have some concerns as a result of that. Now there will be a potential amendment on that bill, which we don't think will effect the appropriations. We ask that you hang onto the bill until we look at it.

**Chairman Holmberg** indicated the plan is to turn this bill over to the subcommittee and then you can get that amendment taken care of. They know that the policy committee has a concern to resolve the question.

**Senator Krauter** raised a question about account liens where child support can be removed from a bank account. It was indicated that this is one of the concerns.

**Senator Robinson** raised a question regarding policy and the significant accounts receivable asked if it would not be wise to do a study and bring this back in two years.

b indicated that many of the tools now in place came direct from the federal mandates.

**Senator Mathern** asked if the new concerns also relate to HB 1172. The response was no.

**Jim Fleming, Deputy Director, Child Support Enforcement**, distributed testimony and testified in support of HB 1173. He responded to questions raised about the fairness of the bill, indicating the bill is heavily regulated and in some cases legal recourse is needed to collect child support. It brings consistency and uniformity to the various collection pools that the state has.

The fiscal note reflects the computer programming fund needed to program the computer to change the process to match the bill and develop an Arrears Registry.

**Roland Reimers, Citizen, Grand Forks**, testified on HB 1173. He indicated that when people are treated fair, child support should not be a problem. He expressed concerns about judgments and liens, perhaps too many doors are being opened. He urged the committee look at the complications going into this entire process. There are some concerns of civil procedure.

**Chairman Holmberg** closed the hearing on HB 1173.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1173

Senate Appropriations Committee

Conference Committee

Hearing Date March 25, 2005

Tape Number

1

Side A

a

Side B

Meter #

623 - 843

Committee Clerk Signature



Minutes:

**Chairman Holmberg** called the discussion to order on HB 1173.

**Jim Fleming, Division of Human Services**, testified on HB 1173 indicating this is the bill referred to as the collections bill incorporating a concept call arrears registry.

**Senator Fischer** indicated the fiscal note on this will be absorbed in the Division of Human Services Budget.

**Senator Fischer** moved a DO PASS, **Senator Tallackson** seconded. A roll call vote was taken resulting in 14 yes, 0 no and 1 absent. The motion carried.

**Chairman Holmberg** closed the discussion on HB 1173.

Date  
Roll Call Vote #:

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 1173

Senate SENATE APPROPRIATIONS

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

D P

Motion Made By

Seconded By

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	/		SENATOR KRAUTER	/	
VICE CHAIRMAN BOWMAN	/		SENATOR LINDAAS	/	
VICE CHAIRMAN GRINDBERG	/		SENATOR MATHERN	/	
SENATOR ANDRIST	/		SENATOR ROBINSON	/	
SENATOR CHRISTMANN	/		SEN. TALLACKSON	/	
SENATOR FISCHER	/				
SENATOR KILZER	/				
SENATOR KRINGSTAD	/				
SENATOR SCHOBINGER	/				
SENATOR THANE	/				

Total (Yes)

14

No

0

Absent

1

Floor Assignment

HMS

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

**REPORT OF STANDING COMMITTEE (410)**  
March 25, 2005 10:50 a.m.

**Module No: SR-55-6197**  
**Carrier: Brown**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1173, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1173, as amended, was placed on the Fourteenth order on the calendar.**

2005 TESTIMONY

HB 1173

## TESTIMONY OF MARILYN FOSS PROPOSING AMENDMENTS TO HB 1173

Chairman Price, members of the committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association ("NDBA"). NDBA is a trade association for state and national banks and federal savings banks which operate throughout North Dakota. Our 93 members operate more than 300 offices and include banks such as Wells Fargo and US Bank which operate offices nationwide and banks which serve only one North Dakota community from a single office. NDBA doesn't often appear before a Human Services Committee; however I did work with the committee in 1997 on the initial legislation to implement a financial institution data match program and I am looking forward to working with you as we try to improve it.

North Dakota banks participate in the 50 states' child support collection efforts through the data match program whereby delinquent obligors are linked to bank accounts and, by holding accounts of delinquent obligors which are subject to a child support lien and levy under which a bank delivers a delinquent obligor's funds to the state, be it North Dakota or another state (when that state is complying with our law for doing so.)

We agree with Mr. Fleming about the need to clarify what a bank is to do when a child support lien is established against a bank account. And, we appreciate the department's (and, specifically, Mr. Fleming's) interest in obtaining industry input and working to improve the protection that is given to banks which honor administrative levies. But, that notwithstanding, as I will outline, NDBA and our member banks very strongly contend that this bill proposes some changes that impose burdens on banks that are not worth the potential benefit, will create confusion and that are also unwise.

Before I get into the details I want to say one more thing. In 1997, our banks were not overly enthused about being requested to change their computer programs and operating systems to screen their depositor records against delinquent obligor data and to report matches to the Department. And yet, even though it was the view of more than a few bank lawyers that the law did not require them to do so, all have done so. Where there have been problems with attachment and levies against accounts it is because the law is not clear and because banks do not simply turn over depositor funds to a third party without valid legal compulsion. We support clarity because our members are not enthusiastic about having to hire and bring in attorneys to parry with child support enforcement officials about differences between what the law says and what it was intended to mean.

Our member banks want child support enforcement law that provide a form of notice of lien that stands out from all the other mail which a bank receives, which provide for liens that clearly attach to and freeze an account upon proper notice of the lien, which, preferably, have the effect of a levy, so the funds are collected by and turned over to a North Dakota agency , subject to the a bank's right of set off, if any, and payment of fees or other amounts which are due to the bank under its written contracts with its customer. This means we are supportive of the changes in Section 6 of the bill.

In our view those provisions of the bill relating to a new financial institution deduction order ( Primarily in Section 14) will be expensive for banks to implement and, once the bank's money is spent, also ineffective because the new system won't be useful after the first or second periodic deduction. The only way to set this up is through ACH, the automated clearing house. ACH is a privately owned and operated system. There is a cost to participating in the system, both for set up and ongoing transactions. As a private system, ACH has rules. Among them is a

requirement that withdrawals from a depositor's account requires the consent of the depositor. This ACH rule is not accommodated by the bill or any other provision of law so far as I am aware.

The department says the financial institution deduction order is modeled on the income payer withholding order model. However the relationship between a bank and its customer is fundamentally different than that of an employer and employee. An employee may be unhappy about a monthly deduction from his wages, but s/he is unlikely to quit a job over it. However, a bank customer who is unhappy that the bank is taking money from an account is able to easily stop the activity. All the depositor has to do is to stop depositing money in the account and find another financial institution or, join the ranks of the "unbanked". You and I may not have figured out how to get by without a relationship with a bank or credit union, but millions of people have done so and operate on cash. Frankly, I fail to see how forcing delinquent child support obligors to operate on what is truly a cash basis helps the situation.

I have discussed my concerns with the department. It told me the concept of the financial deduction order as being just another automatic payment like auto pay plans for utility payments. That would be more tenable if delinquent child support occurs because current methods for paying obligations are not sufficiently "handy". But that's not the case. Serious child support delinquencies occur either because the obligor doesn't want to pay or doesn't have the money to pay. In either case the resulting lack of deposits derails the financial institution deduction order process, but only after the financial institution has incurred substantial costs to implement the new order.

I want to point out other reasons a financial institution deduction order doesn't work. The department proposes that its order be prior to any other claim against an account. All that will do

is to cause an obligor's checks to bounce and make the obligor subject to criminal, civil and financial penalties that attend NSF checks. No doubt, the departmental response to this observation is that paragraph 5 as set out on page 9 (lines 4-11) addresses the problem in the same manner as applies in the case of a lien and levy.. But, it does not. A lien and levy is a one time transaction. A financial institution deduction order is served once and orders periodic deductions. The material in lines 4-11 assumes a one time transaction. Additionally, banks are not set up to be constantly monitoring customers checks to determine the date upon which they were written. I dare say, to do so would require a manual examination of hundreds of thousands of items each day by North Dakota financial institution employees. No amount could adequately compensate a bank for that effort.

The department describes the financial institution deduction as being "innovative". I think "unique" is a better word. When I showed the bill to a representative of one of our nationwide interstate banks which has been very active in the development of workable federal child support collections laws, he commented was that he'd never seen child support legislation that tried to go so far. Yesterday, he told me that his bank didn't think any other state uses this approach. Frankly, it is our position that the provisions in section 14 as they relate to a child support deduction order to a financial institution should be removed.

As an aside I would also point out that we are also concerned about the department's intent to delegate its job to "agents". (This occurs in Sections 12 and 14 of the bill.) Generally, I am skeptical about the use of contract workers to perform government functions. However, as it relates to NDBA membership, I don't know how a financial institution is supposed to determine the fact of the delegation or the extent of the agent's authority. The use of agents will cause practical problems with verification of authority and, beyond that, is a recipe to for increased

fraud as unauthorized persons will attempt to cause bankers and others to pay funds over to them under the guise that they are an agent for a legitimate child support agency.

We also sincerely disagree with the department's plan to change the way interstate child support collections are handled. Current law requires a "foreign" child support agency to collect out of state child support through the department or through agreements between states under which states collect child support owed to an out of state obligee and to "even up" between themselves. This system did make interstate child support collection easier (or would if the states would use it) and recognized the fact that child support orders are issued by the courts and that the enforcement of a foreign court order must be carried out under the laws of each state because the state court from one state has no jurisdiction or power over a bank which is located in another state such as North Dakota and not operating an office in the state of the court which issued the child support order. The concept of "full faith and credit" which is referenced in Sections 10 and 14 requires the states to recognize and have a process to enforce lawful judicial process from another state. So, under federal law, North Dakota must give full faith and credit to a child support lien from another state. We now do because we have a process for the enforcement of those out of state liens. However, full faith and credit does not mean that the process must require banks to send out depositor funds upon receipt of a letter from a person who purports to be a child support agency or, perhaps just an attorney for someone who is owed child support under an out of state order. Yet, by its proposed changes to the law, this is the result the department is trying to achieve.<sup>1</sup>

<sup>1</sup> On page 8 the law is changed to allow a deduction order to be issued by a state agency, rather than a court, and to be served by ordinary mail, rather than certified mail. On page 9, lines 22-23, the bill requires a financial institution to give "full faith and credit" to an order which appears to be regular. Full faith and credit is something which is accorded by state statute as a matter of law, not by a private citizen. This is technical defect in the bill.

The current system for interstate child support collections also reflects the fact that banks are not experts in the child support laws of other states by requiring non North Dakota child support agencies to "run" their collection activities by the North Dakota department of human services. This state agency is an expert on child support laws of the 50 states and is in a far better position to determine the lawfulness of an out of state lien and collection action than is a North Dakota bank. The state department should be kept in the process to protect our citizens and our banks.

I have discussed this subject with the department and have received the response that banks don't need to worry about the authenticity of documents which they receive in the mail from another state because the law includes provisions for immunity from lawsuits and damages and provides for the recovery of attorneys fees. I agree and appreciate that the department has improved the immunity sections of the law, but disagree that the immunity resolves the issues. I and other bank attorneys (relying on case law ) agree that a bank which does nothing to verify the authenticity of an order from another state is opening itself up to liability. (Remember, these out of state orders can come from a state agency, a collection agent or a variety of third parties, under the laws of the other states.) Even if a bank is immune from suit or damages and can recover attorneys fees, one must still hire an attorney, go to court, and collect the awarded fees.

The provisions to make the changes I've been discussing are found in the changes to section 35-34-12 as per Section 10 of the bill and in paragraph 8 of the new section to chapter 50-09 which is added by section 14 of the bill.

Although the department has expressed skepticism about this, I and other financial institution lawyers with whom I've discussed this conclude the expedited collection process which is envisioned by the department for out of state collections will also encourage imposters

to hold themselves out as out of state child support collectors to obtain child support funds from North Dakota financial institutions.

The amendments I have prepared are intended to address the concerns I have raised. I'd be happy to answer your questions. Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1173

Page 5, line 10 remove “and any past-due support that accrues after the lien is perfected”

Page 7, line 9 remove “A lien under this section may be enforced by the party in the same manner provided in section 35-34-10 for liens that are enforced by a child support agency.”

Page 7, line 19, remove “, directly or through agents

Page 7, line 19, remove the second comma

Page 8, remove lines 15 through 25

Page 8, line 26, replace “3.” with “2.”

Page 8, line 26, remove “or financial institution”

Page 8, line 27, remove the second “or”

Page 8, line 28, remove “financial institution”

Page 8, line 30 replace “4.” with “3.”

Page 8, line 30, remove “or financial institution”

Page 9, remove lines 4 through 11

Page 9, line 12 replace “6.” with “4.”

Page 9, line 12, remove “or financial institution”

Page 9, remove lines 16 through 23

Page 9, line 24 replace “9.” with “5.”

Page 9, line 24 remove “or financial institution”

**TESTIMONY**  
**HOUSE BILL 1173 - DEPARTMENT OF HUMAN SERVICES**  
**HOUSE HUMAN SERVICES COMMITTEE**  
**CLARA SUE PRICE, CHAIRMAN**  
**JANUARY 11, 2005**

Chairman Price, members of the House Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Division of the Department of Human Services. I am here to ask for your favorable consideration of House Bill 1173.

This bill is about collecting child support arrears, which have grown to over \$200 million statewide. Over half this amount is assigned to the State of North Dakota. Before explaining the sections of the bill, I'd like to begin by emphasizing two common themes of the legislation. First, the statewide data regarding people who owe child support in North Dakota shows that once a person owes more than a couple thousand dollars in child support arrears, the person is much less likely to make regular payments or get caught up. The key to slowing the growth in unpaid arrears and promoting regular payments of child support is to get involved proactively in a case before an obligor gets too far behind. The federal Office of Child Support Enforcement has said it quite plainly:

The best way to reduce the total national child support debt is to avoid accumulating arrears in the first place. The best ways to avoid the accumulation of arrears are to set appropriate orders initially, modify orders via simple procedures promptly when family circumstances change, and immediately intervene when current support is not paid.

Office of Child Support Enforcement, The Story Behind the Numbers – Who Owes the Child Support Debt? (July 2004) (emphasis added).

For some collection tools that are well suited to collecting child support arrears, such as liens and executions, we currently have to wait until an obligor is six months behind before using those tools. By that time, the obligor may be so far behind that a payment plan is no longer a realistic option and we may have to seize or sell property the obligor needs such as a vehicle or tools. Earlier intervention would have sent the message to the obligor that failure to comply with a child support order leads to unpleasant consequences before it became too late for an obligor to see the error of his or her ways.

The second common theme of the legislation is to use our arrears collection tools in a more consistent and efficient manner. Liens, executions, license suspension, intercepting lump sum payments, and public disclosure all have different "triggers" in the law. Some happen right away, like income withholding. Some are available after three months, others after six months. Some are based on how many months behind a person is, others are based on a simple dollar amount of arrears. In the end, these different triggers make it difficult for child support caseworkers to use the right tool at the right time for a particular obligor.

For example, an avid hunter will pay attention when he or she receives a license suspension notice after falling three months behind. A car enthusiast may not care much about losing his or her hunting license, but will care a lot when a lien is placed on the title to the classic Corvette or Mustang sitting in the garage. Unfortunately, the caseworker has to wait another three months after the person is eligible for license suspension to place the lien on the vehicle, which is enough time to transfer a clean title to the vehicle to someone else. Likewise, an obligor may be required to pay \$100 per month under income withholding to pay down an arrearage, but gets to keep a lump sum payment in full as long as the payment is under \$1,000. The different triggers make the job of the child support caseworker much harder, reduce efficiency, and don't allow us to respond as quickly as we need to in order to prevent the arrears balance from getting bigger.

In addition, for some of our collection tools, such as administrative executions, there are steps required under current law, such as docketing with the clerk of court and personal service by a sheriff, that add delay and expense to the process, not to mention consuming the time of other public officials. This is particularly true in the area of bank accounts, and we lag well behind our sister states in collecting child support through the financial institution data match (FIDM).

The legislation before you addresses these themes by streamlining the tools we have today, adding an innovative process for bank accounts, consolidating the "triggers" for many of our enforcement tools, and setting the consolidated "trigger" at a level that is low enough for us to prevent obligors from getting so far behind that they can never get caught up.

#### **Section Ten**

This section establishes an arrears registry of all obligors who owe more than two month's worth of support or \$2,000, whichever is less. We propose this threshold because we see a significant change in compliance at the \$2,500 level.

#### **Section One**

This section adds a new definition to incorporate the arrears registry concept. A definition of "monthly support obligation" is also added to codify an Attorney General's opinion that income withholding orders are based on the obligor's monthly obligation rather than a different amount the obligor may be required to pay to avoid being held in contempt of court. The definition clarifies the amount that is due for purposes of income withholding when a portion of the obligation has been ordered to accrue as an arrearage. If an amount of arrears has been ordered as one lump sum rather than determined on a monthly basis, the default monthly obligation is \$168, which is the amount currently owed under the child

support guidelines for a minimum wage obligor for one child. For clarity, the definitions of "child support agency" and "public authority" are combined and the obsolete definition of "system implementation date" is repealed.

## **Section Two**

The trigger for intercepting a lump sum payment to an obligor is reduced from \$1,000 to \$500. Current law limiting the amount intercepted to one-half of the payments would not be changed.

## **Section Three**

This section streamlines the existing process for administrative executions by incorporating the arrears registry concept and removing the requirement that the judgment be docketed. It also anticipates a possible federal process for executing on accounts in multistate cases.

## **Section Four**

This section adds several definitions to the chapter of the North Dakota Century Code regarding child support liens to incorporate the arrears registry concept and the new definition of "monthly support obligation."

## **Section Five**

This section incorporates the arrears registry concept for liens and extends the liens to include any after-accrued arrears.

### **Section Six**

**This section clarifies current law and reiterates that the effect of a child support lien on an account is to freeze subsequent withdrawals from the account.**

### **Section Seven**

**This section clarifies current law by expressly authorizing the child support agency to release a lien.**

### **Section Eight**

**This section amends current law to reflect other changes in the bill and to ensure that a third party who complies with a lien or execution for child support is protected from any liability for complying with state law.**

### **Section Nine**

**This section clarifies how a lien may be enforced and incorporates other changes in the bill.**

### **Section Ten**

**This section clarifies that a lien from another state can be enforced in the same way as a lien from this state.**

### **Section Twelve**

**This section incorporates the arrears registry concept for purposes of administrative license suspension.**

### **Section Thirteen**

**This section incorporates the arrears registry concept for purposes of public disclosure of obligors and allows us to use public disclosure to locate alleged parents.**

### **Section Fourteen**

**This section creates a new enforcement tool specifically designed for accounts and payers of lump sums to obligors. This new tool, called a financial institution deduction order or FIDO, combines the effectiveness of a lien or execution with the speed and automation of income withholding. In one consolidated form, the child support enforcement program can direct a financial institution or income payer to do any combination of the following: freeze the funds, turn over the funds, or deduct a portion of the funds on an ongoing basis similar to income withholding. As with any income payer who withholds funds under an income withholding order, the financial institution is allowed to withhold up to \$3 per deduction to cover its expenses. This is not a fee that financial institutions are currently allowed to charge in response to an execution. A financial institution or income payer that complies with a FIDO is given the same immunity as other income payers who comply with an income withholding order.**

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1173

Page 5, line 17, after "action" insert "or in any other manner agreed to by the financial institution"

Page 5, line 26, overstrike the comma and remove "prohibits the account from being"

Page 5, line 27, remove "closed."

Page 5, line 30, remove ", and within fifteen days of being served with the notice of the lien  
shall."

Page 8, line 16, replace "take one or more of the following actions" with "deduct the amount  
identified in the order from"

Page 8, line 17, remove "regarding" and replace the colon with a period

Page 8, remove lines 18 through 25

Page 8, replace "by first-class mail" with "in the manner provided for service of a summons in a  
civil action"

Page 9, line 2, after "served" insert a period and remove "and on any future date or interval as  
directed in the order, together with a"

Page 9, remove line 3

Page 9, line 4, replace "Except as provided in this section, an" with "An"

Page 9, line 5, remove the period and replace "If an account is frozen" with ", except to the  
extent necessary to"

Page 9, remove line 6

Page 9, line 7, remove "served with the order shall,"

Page 9, line 13, remove "per deduction"

Page 9, remove lines 16 through 19

Page 9, line 20, replace "8." with "7."

Page 9, line 24, replace "9." with "8."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1173

Page 5, line 17, after "action" insert "or in any other manner agreed to by the financial institution"

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Page 8, line 17, remove "regarding" and replace the colon with a period

Page 8, remove lines 18 through 25

Page 8, line 27, replace "by first-class mail" with "in the manner provided for service of a  
summons in a civil action"

Page 9, line 2, after "served" insert a period and remove "and on any future date or interval as  
directed in the order, together with a"

Page 9, remove line 3

Page 9, line 4, replace "Except as provided in this section, an" with "An"

Page 9, line 5, remove the period and replace "If an account is frozen" with ", except to the  
extent necessary to"

Page 9, remove line 6

Page 9, line 7, remove "served with the order shall."

Page 9, line 13, remove "per deduction"

Page 9, remove lines 16 through 19

Page 9, line 20, replace "8." with "7."

Page 9, line 24, replace "9." with "8."

Renumber accordingly

# TESTIMONY OF GREG TSCHIDER PROPOSING AMENDMENTS TO HOUSE BILL NO. 1173

GREG TSCHIDER, ND CREDIT UNION LEAGUE

Chairperson Price and Members of the Human Services Committee, I am Greg Tschider and I represent the North Dakota Credit Union League.

As explained by the North Dakota Bankers Association, financial institutions in North Dakota presently participate in the states' child support collection efforts through the data match program. Our concern is that this proposed legislation expects the financial institutions to perform more work and more guess work in regards to foreign claims. Financial institutions are certainly willing to work with the Department, however, I am extremely concerned about foreign claims. How do financial institutions verify the authenticity of the claims. Credit Unions have been confronted with numerous problems relating to fraudulent cashier's checks and altered documents, all of which "appeared to be legitimate documents". It is interesting to note that on line 21, page 9 of the bill, reference is made to the fact that an order or other legal process is acceptable if it "appears regular on its face". What does that mean? What are the guidelines to determine if a document "appears" regular on its face? This opens the doors to fraudulent and altered documents. Also, I can envision that after a credit union has disbursed the funds, that a claim is made by the obligor that the document did not "appear" regular and

therefore should not have been honored. Thus, the credit union could be penalized because the credit union guessed wrong in regards to appearances.

If the Department is responsible for the liens, orders, etc., it is relatively easy for the credit union to contact a Department employee to determine the veracity of the claim. That is not available with foreign claims.

In regards to Section 14, the concept of a child support deduction order in regards to a financial institution initially sounds like a good idea, but it is not practical. This section requires the financial institution to basically set up an automatic withdrawal. However, as soon as that occurs, the debtor will close the account. So what is the value of performing the work of an automatic withdrawal? This is just not practical. Other specific problems with the section are as follows:

On lines 26 and 27, the bill states that the order is effective when it is placed in the mail. What happens if it is not received? A financial institution should not be liable if the mail does not arrive. Also, a financial institution receives huge amounts of first class mail. What identifies the agency's mail which imposes liability on the financial institution? This section is not fair or reasonable.

In subsection 4, the bill provides that the financial institution must remit the funds within seven (7) days after the order is mailed and transmit the funds, however, subsection 5 provides that the financial institution has fifteen (15) days to claim set-off. These provisions are contradictory.

Thus, it appears that it is submitted that changes to this bill are necessary, and the North Dakota Credit Union League supports the amendments submitted by the North Dakota Bankers Association.

# MEMORANDUM

**DATE:** March 21, 2005

**TO:** Jane Stetson, Committee Clerk  
House Human Services

**FROM:** Timothy J. Karsky, Commissioner

**SUBJECT:** Testimony on January 11, 2005



Per your phone call on March 18, 2005, you indicated that I testified before the Human Services Committee on January 11, 2005, concerning House Bill No. 1173. At the Committee hearing I indicated I had just received notice of this bill and had only portions of the bill at that time. I also testified that this bill put additional regulations on financial institutions. I also stated that financial institutions are one of the most regulated businesses in the United States, and that I feared putting more requirements on them could be a burden. I was also concerned about the bank requirement to take money out of this account on an ongoing basis and whether or not legal service had been properly given to the bank to deduct these sums of money.

I do not have my notes from the January 11<sup>th</sup> testimony, but I believe the above encompasses what my concerns were.

If you have any further comments or questions, please contact me at your earliest convenience.

TJK:sr

**TESTIMONY  
HOUSE Bill 1173 - DEPARTMENT OF HUMAN SERVICES  
SENATE HUMAN SERVICES COMMITTEE  
JUDY LEE, CHAIRMAN  
FEBRUARY 28, 2005**

Chairman Lee, members of the Senate Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Division of the Department of Human Services. I am here to ask for your favorable consideration of Engrossed House Bill 1173. Attached to my testimony are some technical amendments to correct internal references in the bill.

This bill is about collecting child support arrears, which have grown to over \$200 million statewide. Over half this amount is assigned to the State of North Dakota. Before explaining the sections of the bill, I'd like to begin by emphasizing two common themes of the legislation. First, the statewide data regarding people who owe child support in North Dakota shows that once a person owes more than a couple thousand dollars in child support arrears, the person is much less likely to make regular payments or get caught up. The key to slowing the growth in unpaid arrears and promoting regular payments of child support is to get involved proactively in a case before an obligor gets too far behind. The federal Office of Child Support Enforcement has said it quite plainly:

The best way to reduce the total national child support debt is to avoid accumulating arrears in the first place. The best ways to avoid the accumulation of arrears are to set appropriate orders initially, modify orders via simple procedures promptly when family circumstances change, and immediately intervene when current support is not paid.

Office of Child Support Enforcement, *The Story Behind the Numbers – Who Owes the Child Support Debt?* (July 2004) (emphasis added).

For some collection tools that are well suited to collecting child support arrears, such as liens and executions, we currently have to wait until an obligor is six months behind before using those tools. By that time, the obligor may be so far behind that a payment plan is no longer a realistic option and we may have to seize or sell property the obligor needs such as a vehicle or tools. Earlier intervention would have sent the message to the obligor that failure to comply with a child support order leads to unpleasant consequences before it became too late for an obligor to see the error of his or her ways.

The second common theme of the legislation is to use our arrears collection tools in a more consistent and efficient manner. Liens, executions, license suspension, intercepting lump sum payments, and public disclosure all have different "triggers" in the law. Some happen right away, like income withholding. Some are available after three months, others after six months. Some are based on how many months behind a person is, others are based on a simple dollar amount of arrears. In the end, these different triggers make it difficult for child support caseworkers to use the right tool at the right time for a particular obligor.

For example, an avid hunter will pay attention when he or she receives a license suspension notice after falling three months behind. A car enthusiast may not care much about losing his or her hunting license, but will care a lot when a lien is placed on the title to the classic Corvette or Mustang sitting in the garage. Unfortunately, the caseworker has to wait another three months after the person is eligible for license suspension to place the lien on the vehicle, which is enough time to transfer a clean title to the vehicle to someone else. Likewise, an obligor may be required to pay \$100 per month under income withholding to pay down an arrearage, but gets to keep a lump sum payment in full as long as the payment is under \$1,000. The different triggers make the job of the child support caseworker much harder, reduce efficiency, and do not allow us to respond as quickly as we need to in order to prevent the arrears balance from getting bigger.

In addition, for some of our collection tools, such as administrative executions, there are steps required under current law, such as docketing with the clerk of court and personal service by a sheriff, that add delay and expense to the process, not to mention consuming the time of other public officials. This is particularly true in the area of bank accounts, and we lag well behind our sister states in collecting child support through the financial institution data match (FIDM).

The legislation before you addresses these themes by streamlining the tools we have today, adding an innovative process for bank accounts, consolidating the “triggers” for many of our enforcement tools, and setting the consolidated “trigger” at a level that is low enough for us to prevent obligors from getting so far behind that they can never get caught up.

#### **Section Ten**

This section establishes an arrears registry of all obligors who owe more than two month’s worth of support or \$2,000, whichever is less. We propose this threshold because we see a significant change in compliance at the \$2,500 level.

#### **Section One**

This section adds a new definition to incorporate the arrears registry concept. A definition of “monthly support obligation” is also added to codify an Attorney General’s opinion that income withholding orders are based on the obligor’s monthly obligation rather than a different amount the obligor may be required to pay to avoid being held in contempt of court. The definition clarifies the amount that is due for purposes of income withholding when a portion of the obligation has been ordered to accrue as an arrearage. If an amount of arrears has been ordered as one lump sum rather than determined on a monthly basis, the default monthly obligation is \$168, which is the amount currently owed under the child

support guidelines for a minimum wage obligor for one child. For clarity, the definitions of "child support agency" and "public authority" are combined and the obsolete definition of "system implementation date" is repealed.

## **Section Two**

The trigger for intercepting a lump sum payment to an obligor is reduced from \$1,000 to \$500. Current law limiting the amount intercepted to one-half of the payments would not be changed.

## **Section Three**

This section streamlines the existing process for administrative executions by incorporating the arrears registry concept and removing the requirement that the judgment be docketed. It also anticipates a possible federal process for executing on accounts in multistate cases.

## **Section Four**

This section adds several definitions to the chapter of the North Dakota Century Code regarding child support liens to incorporate the arrears registry concept and the new definition of "monthly support obligation."

## **Section Five**

This section incorporates the arrears registry concept for liens and extends the liens to include any after-accrued arrears.

### **Section Six**

**This section clarifies current law and reiterates that the effect of a child support lien on an account is to freeze subsequent withdrawals from the account.**

### **Section Seven**

**This section clarifies current law by expressly authorizing the child support agency to release a lien.**

### **Section Eight**

**This section amends current law to reflect other changes in the bill and to ensure that a third party who complies with a lien or execution for child support is protected from any liability for complying with state law.**

### **Section Nine**

**This section clarifies how a lien may be enforced and incorporates other changes in the bill.**

### **Section Eleven**

**This section incorporates the arrears registry concept for purposes of administrative license suspension.**

### **Section Twelve**

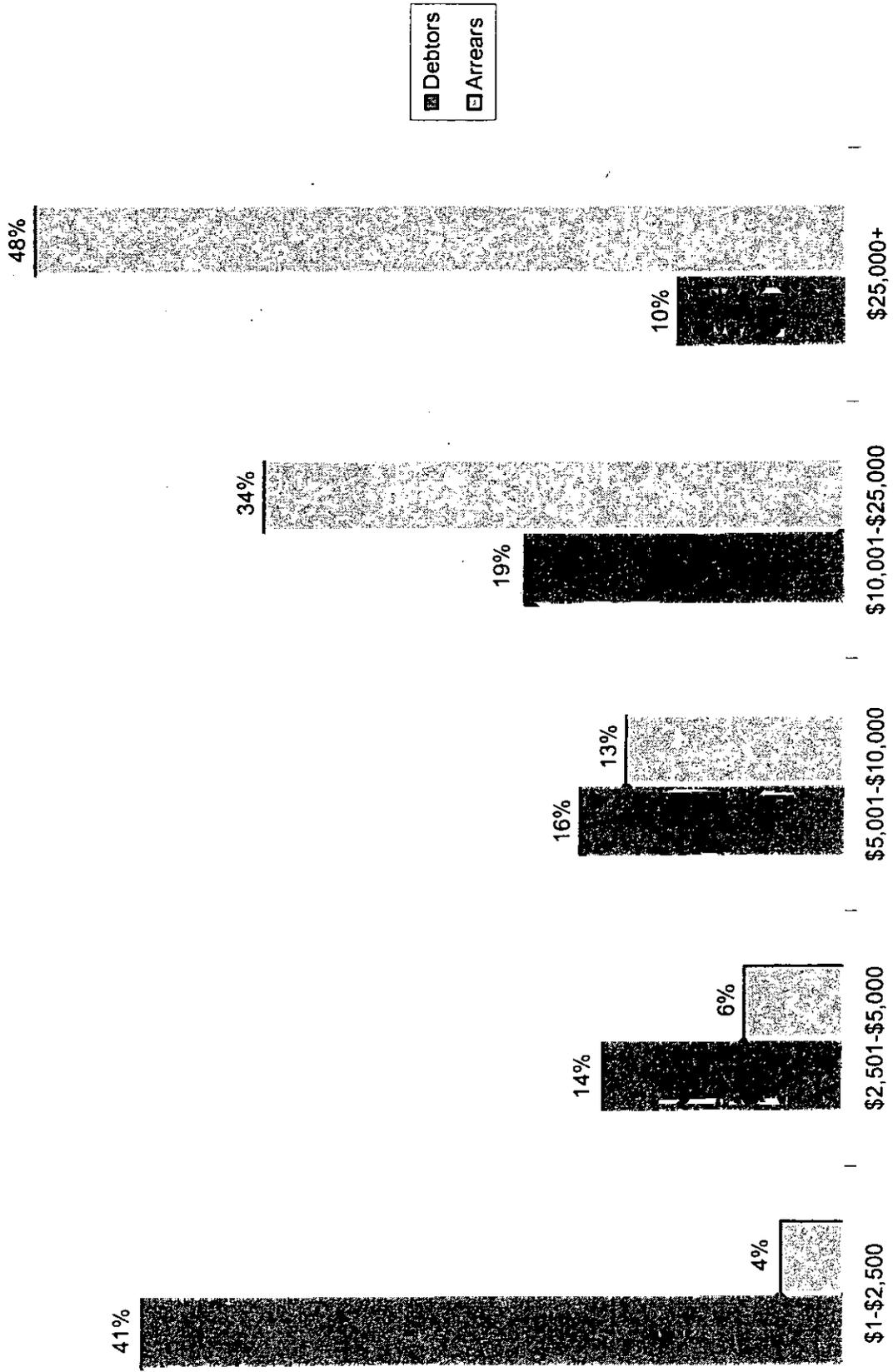
**This section incorporates the arrears registry concept for purposes of public disclosure of obligors and allows us to use public disclosure to locate alleged parents.**

### **Section Thirteen**

**This section creates a new enforcement tool specifically designed for accounts and payers of lump sums to obligors. This new tool, called a financial institution deduction order or FIDO, combines the effectiveness of an execution with the speed and automation of income withholding. By sending a FIDO via certified mail, the child support enforcement program can require a financial institution or income payer to turn over the funds. As with any income payer who withholds funds under an income withholding order, the financial institution or income payer is allowed to withhold up to \$3 per deduction to cover its expenses. This is not a fee that financial institutions are currently allowed to charge in response to an execution. A financial institution or income payer that complies with a FIDO is given the same immunity as other income payers who comply with an income withholding order.**

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

Distribution of Debtors and Arrears by Amount of Arrears Owed - December 2004



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1173

Page 1, line 12, replace "11" with "10"

Page 6, line 29, replace "14" with "13"

Renumber accordingly

Attachment 1  
3/15/05

TALK TO JULIE

**Tabor, Sandi (Attorney General's Office)**

**From:** Krenz, Julie A.  
**Sent:** Wednesday, March 09, 2005 1:34 PM  
**To:** Tabor, Sandi (Attorney General's Office)  
**Subject:** FW: HB 1172 & 1173

**From:** Anderson, Doug B.  
**Sent:** Wednesday, March 09, 2005 1:20 PM  
**To:** Krenz, Julie A.  
**Subject:** RE: HB 1172 & 1173

*Don't know  
of that*

Julie:

I do not believe there is any problem in the manner of execution proposed by the bills as indicated by Doug Bahr and Jim Fleming. The process is somewhat similar to the manner in which SLND may act under federal regulations to enforce an administrative wage garnishment without first obtaining a judgment.

**From:** Anderson, Doug B.  
**Sent:** Wednesday, March 09, 2005 12:33 PM  
**To:** Krenz, Julie A.  
**Subject:** RE: HB 1173

Yes I will look at them shortly. Thanks.

**From:** Krenz, Julie A.  
**Sent:** Wednesday, March 09, 2005 12:32 PM  
**To:** Anderson, Doug B.  
**Subject:** FW: HB 1173

FYI. Bill's comments. Will you be able to get back to me today on these bills? Thanks. Julie

**From:** Peterson, Bill G.  
**Sent:** Wednesday, March 09, 2005 11:19 AM  
**To:** Krenz, Julie A.  
**Subject:** RE: HB 1173

I looked at the bills, but without alot of research I can't provide any insight. I know nothing about child support and I haven't done collections or executions for a long time.

**From:** Krenz, Julie A.  
**Sent:** Wednesday, March 09, 2005 8:56 AM  
**To:** Peterson, Bill G.; Anderson, Doug B.  
**Cc:** Bahr, Douglas A.  
**Subject:** FW: HB 1173  
**Importance:** High