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OMB/RECORDS MANAGEMENT DIVISION

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DESCRIPTION

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2001 HOUSE HUMAN SERVICES

HB 1168

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1168

House Human Services Committee

Conference Committee

Hearing Date January 15, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		5108 to 6200
Tape 1		X	01 to 5040
<i>tape 2</i>	<i>X</i>		<i>0 to 1415</i>
Committee Clerk Signature	<i>Cornie Easton</i>		

Minutes:

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

Chairman Price: Opened the hearing on HB 1168.

Mike Schwindt: Child Support Director for the Department of Human Services. We requested HB 1168 to address the calculation of interest on unpaid child support. (See Testimony)

A draft amendment was presented. The amendment is intended to assure that people subject to child support orders will be informed that the failure to make timely payments will result in interest charges.

Rep. Niemeier: In your testimony you mentioned a figure of 12% interest. There isn't any number in the bill or in the amendment. How will that be decided?

Mike Schwandt: There is a section in the law titled 28 dealing with judgments that specifies what the interest rates will be.

Rep. Sandyig: What is the status of the FACES system? Is it up and running? Are we behind in getting any federal penalties?

Mike Schwandt: The second years penalty was about \$30,000. All total we are out about \$150 to \$160,000. We're not expecting any problems. Is it all done - No? We think we are in fairly good shape. If you want to watch how we are doing, you can go out on the federal government web site. There is an area there relating to state's recertification.

Rep. Porter: What would happen if North Dakota decided not to charge interest?

Mike Schwandt: North Dakota does not have to. It is not a federal law.

Rep. Porter: In that 3-year time frame when the department goes back and goes to court on behalf of the non-custodial parent, and if the income has increased and there are arrearages assigned then when would the interest start on those arrearages because the income increased for that person?

Mike Schwandt: The interest accrues based on when the court order says it is do and it is not paid. The court order hasn't changed, so there is no impact.

Rep. Porter: So then when that amount changes and that arrearage is determined, then the interest if it was from October 1 then interest starts October 1 until that arrears is paid up.

Mike Schwandt: If I owe \$100 on the 1st of October and I don't pay it on the 1st of October, then I start accruing interest obligation on the 2nd of October.

Rep. Porter: I guess I'm thinking that if the court comes back after looking at the dollar amount and says your \$1,000 in the arrears because your income changes at this point and the amount of child support hasn't changed until now when we've met, not only are we going to up what your

child support is, we are also going to put you in arrears for this time frame for this lump sum of money. Is that money, that lump sum charged interest?

Mike Schwindt: I would expect that the answer to that is no. There is no interest charged because there is no obligation to pay. If the judge says you now have to pay \$100 plus \$20 a month on arrears, as long as you made the \$120 dollar payment there wouldn't be any interest charged.

Rep. Doseh: You indicated that interest begins if it is due October 1 and it hasn't been paid, October 2 interest starts accruing. You also indicated that there is a time difference when employees wages are being garnished there could be a week or two difference. Is there any grace period to allow for that discrepancy in timing?

Mike Schwindt: That is what we have to figure out. Less than a month no interest would be charged. Over a month interest will be charged.

Rep. Porter: It is my understanding that the interest collected does go to whoever the child support is owed. This isn't the money that the state keeps.

Mike Schwindt: Interest goes the same as the principal goes. If the principal is assigned to the state, interest would go to the state. If the principal is assigned to the family, the interest goes to the family.

Vice Chairman Devlin: I have heard a couple of times that there is no federal law, but that it is state law we are dealing with, but really what we are dealing with is the state court orders.

Mike Schwindt: The law says that these are judgments by operations of law and it is state law.

Vice Chairman Devlin: If the court in '99 wouldn't have declared that to be a judgment, we wouldn't be here today dealing with this.

Mike Schwandt: I can't answer that. I do know this has been an on-going issue. We are trying to follow the law.

Rep. Niemeier: Is this proposal to charge interest seen as an incentive to comply with child support payments?

Mike Schwandt: The history books on this are somewhat spotty. I don't know the answer for sure. In some cases where people have the opportunity to pay their Visa bill at %18 percent interest or their child support at no percent, they will pay their Visa bill.

Rep. Niemeier: What is the rest of the argument then? If it isn't working very well as an incentive, what is the other rationale?

Mike Schwandt: The reason we brought this bill here is that we want to fix the start date to calculate the interest.

Rep. Niemeier: But this is the beginning of charging interest, right?

Mike Schwandt: No, there are a few orders out there now where interest is actually calculating. It has been there, it is just that not much has been done with it.

Rep. Pollert: When does the state keep the money, and when does the custodial parent keep the money?

Mike Schwandt: The federal distribution rules describes who is going to get the money and in what order.

Rep. Pollert: So it is up to the department - we have some brilliant people up there that know as far as if this person is on welfare, or this person is on TANF. So that's when you are saying that these cases all intermingle. So you can't give me a definite answer when it becomes that way and when it stays in the state coffers.

Mike Schwindt: Generally, when someone is on TANF, state will get the money back. It is retained back to cover the public's expenditures, up to a point. After it covers what the state has put out, we no longer retain it.

Rep. Sandvig: I am having a little bit of difficulty understanding as to why with the new computer system that we've been paying for why you can't go back and calculate those interest payments on that back-owed child support. With the cost of the computer system, it should be capable of doing this.

Mike Schwindt: First of all there are 20,000 cases that we are talking about. Second of all in order to do it properly we have to take each case. Figure out the date the money came in. There is going to be a lot of time spent digging for stuff. Not only that, but some of this information is out of state, and some of it even out of country. It would involve reconstructing the history books.

Rep. Weisz: I understand why we are here is that the arrearages automatically qualify for judgement, which means that they are subject to interest. If we wanted to avoid the hassle of collecting the interest, how would you change law to get around collecting interest?

Mike Schwindt: Probably repeal the law. I don't know the answer to that - I would need to talk to an attorney.

Chairman Price: To make sure that I have this right. Currently this interest is due on anyone of these cases, and any custodial parent out there in the whole state could go after it right now if they wanted to.

Mike Schwindt: Yes Madam Chairman.

Chairman Price: And what you would like to do is have a certain date to start applying the interest to make it nice and clean and neat, and that would be your authority? And every other

case out there, if the custodial parent wants the money, they have to go to court for it and have it figured by someone other than your office.

Mike Schwindt: It could be done by negotiations, or by other means.

Chairman Price: So you are not adding anything new, you are just saying this is a date that you are going to start, and that you don't have to go back and reopen 20,000 cases, although anyone of them can be opened by the custodial parent if they want to.

Mike Schwindt: Yes Madam Chairman.

Chairman Price: Anyone else in favor of HB 1168? Anyone else in opposition of HB 1168?

Susan Beehler: Lobbyist for R-KIDS. We are opposed to HB 1168 for three reasons: The lack of accountability the child support office has. Accurate arrearages are difficult to obtain from Child Support Enforcement, and to verify interest is going to be attached to unreliable figures, and inefficiency. Interest is or could be difficult to figure. It takes anywhere from 9 months over a year to have an adjustment now. The manpower is already running slow or overworked, the interest figuring will detract from getting child support orders already in place, enforced and modified, thus delaying support to the children. (See Testimony)

Rep. Weisz: Current law makes it clear that the state has to charge interest.

Susan Beehler: You need to amend that law.

Rep. Weisz: Current law makes it clear interest is to be collected. This is not addressing arrearages, but the interest on arrearage. This bill is an improvement over current state law.

Susan Beehler: The state want's to benefit.

Aaron Stroh: President of R-Kids. I am opposed to this bill. Currently if we have an adjustment or modification for child support, if my income would go up I would all of a sudden my child support payments would have to go up \$50 a month they have it retroactive from when it was

filed. In that case all of a sudden I am in arrearage. The way this bill is written, after January 1 of 2002 they can go back and start charging me interest on the judgement that was made eight months later. I don't think that's fair, and I don't think it is right. Another thing I feel that this bill does is that it gives further incentive for the few bad apples that are out there. They say there are 20,000 cases out of 37,000 cases in North Dakota that are in arrearage. I think some of those are because of when a new adjustment is made that people find themselves in arrearage already - Judgement just came out and they are already 16 months in arrearage. I think that you would find that the majority of those cases would show that. When you're that far in arrearage, it is hard to make it up, and if you compound it more with interest - it wouldn't be bad if it was 1% per month, but if it is 12% you are looking at extremely high interest rate. Who is going to be able to catch up with something like that. I am also handing out another written testimony from someone else. (See Margaret Rothe's written testimony.) Also, at the beginning of the bill starting on line 8 - "any disbursement made in error is not a gift and must be repaid". What happens if the department makes an error? Am I able to get that back? There is nothing in this bill that addresses that.

Rep. Niemeier: The organization that you represent, can you tell us any more stories about the families that are involved there. Do you have a feeling from those families regarding interest payments?

Aaron Stroh: I cannot give you the full story. I just know some have been charged interest.

Rep. Niemeier: Did interest charged expedite the payments?

Aaron Stroh: No, I couldn't tell you. I think something should be done to those that are in severe arrearages. The thing is that most of us are not in severe arrearages. If I'm making payments on the 12th and they don't disburse until the 18th, I shouldn't be in arrearage.

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Rep. Metcalf: I need positive facts, then I would be very much interested. We only act on facts.

Rep. Price: Closed hearing on HB 1168.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1168 b

House Human Services Committee

Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
2		xx	1980--end
3	xx		1--2790
Committee Clerk Signature <i>Cornie Easton</i>			

Minutes:Chair Price : Take up HB1168. You have an amendment by Rep. Weisz.

Rep. Weisz : Explained amendment.

Mike Schwindt, Dept. of Human Services : What happens to the rest of the bill with this amendment. We would be opposed to this amendment. We would be able to access but not collect. We could collect but only with a court order. If we developed an amnesty program, this would cause an important shift. The law requires the application of interest before principle. I'm not sure how that will be done, if we can't collect. We have to report information to credit bureaus. We ended up with more issues then we started with. People, right now can say, we don't want interest charged on our debt.

Chair Price : I need a clarification. The department has not been collecting interest.

Mike : We have been, but only in a few cases. It's a philosophical issue. People pay interest on their cars, so why not charge people interest for their late child payments.

