

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2310

2005 SENATE JUDICIARY

SB 2310

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2310

Senate Judiciary Committee

Conference Committee

Hearing Date January 26 , 2005

Tape Number	Side A	Side B	Meter #
1		X	5500 - end
2	X		0.0 - 820
Committee Clerk Signature <i>Mona L Solberg</i>			

Minutes: Relating to the interest on unpaid child support obligations.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen Fischer, Dist #46 Introduce the Bill (meter 5506) Gave testimony - Att. #1

Testimony in Opposition of the Bill:

James Fleming, Deputy Dir. and Gen Counsel of the State Child Support Enforcement Div. of the Department of Human Services. (meter 6200) Gave Testimony - Att #2.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Sen. Nelson made the motion to Do Not Pass SB 2310 and **Senator Triplett** seconded the motion all were in favor.

Carrier: **Senator Hacker**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 1/26/05
 Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2310

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sen Nelson Seconded By Sen. Triplett

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett		✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment Sen. Hacker.

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

REPORT OF STANDING COMMITTEE (410)
January 31, 2005 12:18 p.m.

Module No: SR-20-1418
Carrier: Hacker
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2310: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2310 was placed on the
Eleventh order on the calendar.

2005 TESTIMONY

SB 2310

AH #1

SB 2310

Mister Chairman, members of the Judiciary Committee

For the record my name is Tom Fischer, State Senator, District 46, Fargo.

Senate Bill 2310 removes the interest from arrears in the child support system.

At the present time the interest rate is the same as all judgments. I attended a NCSL Conference last year and several legislators found that most states either have no interest or the interest is much lower than the 12 percent that we currently charge.

I have every confidence in this committee that the proper solution will be found to promote the payment of child support.

There are some people here from the child support enforcement unit who will explain the bill in detail and with your permission, Mr. Chairman, I will defer to them.

If you have any questions I will try to answer them.

Thank you

Att #2

TESTIMONY
SENATE BILL 2310 – DEPARTMENT OF HUMAN SERVICES
SENATE JUDICIARY COMMITTEE
JOHN T. TRAYNOR, CHAIRMAN
JANUARY 26, 2005

Chairman Traynor, members of the Senate Judiciary 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 on behalf of the Department to respectfully ask for a "Do Not Pass" recommendation on Senate Bill 2310.

The Department sees merit in the proposal – as the balance of unpaid child support in North Dakota tops \$200 million, we do not want to see that amount inflated with judgment interest that cannot be collected. Ironically, if this bill had been introduced in 1999 or 2001, the Department likely would have been neutral on the bill or supported it. However, the Department believes it is premature at this time to discontinue assessing judgment interest on unpaid child support.

Some context on child support judgment interest may be helpful to the committee's consideration of the bill. In 1989, the North Dakota Supreme Court held that unpaid child support is a judgment by operation of law, N.D.C.C. § 14-08.1-05, and therefore accrues interest at the statutory rate. Baranyk v. McDowell, 442 N.W.2d 423 (N.D. 1989). However, aside from the few child support judgments that were docketed with the clerk of court, no one was computing the interest on these debts.

In the late 1990s, the clerks of court and staff in the child support enforcement program were working hard to build the Fully Automated Child Support Enforcement System (FACSES) and store all existing payment records in that system. In early 1999, the North Dakota Supreme Court issued a decision in a child support case that confirmed the fact interest is owed and payments on each month's debt should be applied to interest before principal. Martin v. Rath, 589

N.W.2d 896 (N.D. 1999). At the time, FACSES was not designed to handle judgment interest, and we were in the curious position of applying all payments to the unpaid child support knowing that a portion of those payments should have been applied instead to the interest.

The Martin v. Rath decision was rendered too late in 1999 to prompt legislation on whether unpaid child support should continue to accrue interest. In 2001, the Department requested legislation in the area of judgment interest. The bill passed by the Legislature, House Bill 1168, did not attempt to reverse the prior court cases, but instead authorized the Department to accrue interest on all debts that first became due and unpaid after July 1, 2002. This delay gave the Department time to program FACSES to support the calculation of judgment interest. The bill also provided that the Department was not required to go back and compute interest on the older debts. A judgment creditor is free to compute interest for these prior periods and have the amount of interest approved by the court.

In 2003, we were ready to take the next step and supported legislation, enacted as Senate Bill 2246, to authorize the Department to compute interest on the "older" debts for months after January 1, 2004. Again, the delay was intended to give the Department time to program FACSES and did not require the Department to go back and compute interest for prior periods of time.

Under today's law, the records on FACSES accurately reflect all judgment interest that has accrued on unpaid child support that first became due on or after July 1, 2002. Interest is also accruing on all other unpaid child support owed under North Dakota court orders. Our records have never been more accurate regarding the judgment interest that is due in each case.

As in 2001, there are positives and negatives to charging judgment interest.

On the negative:

- Judgment interest adds to the debt of obligors, many of whom are already far behind. At an effective rate of one percent per month, we deal with a certain number of obligors who cannot afford the interest on their obligation and, therefore, will never get out of debt. If interest was not charged, every dollar we collect could be applied to reduce the outstanding principal.
- On a statewide arrearage of \$200 million and an effective rate of one percent per month, \$2 million in additional interest accrues each month and needs to be collected. In other words, we need to collect or write-off \$2 million in unpaid child support and interest each month just to keep up.
- Calculating judgment interest requires a significant investment in technology, both to program FACSES and to run the computer job every month to calculate the interest that has accrued.

On the positive:

- Why should families be denied the same interest that accrues on other judgments? When child support is due and unpaid, the family often struggles to find the resources to cover the expenses of everyday life. Judgment interest is the accepted way of compensating judgment creditors for the lost use of the money.
- By charging interest, obligors who refused to pay support when it first became due bear the consequences of avoiding their obligation.
- Our experience is that the accrual of judgment interest is an incentive to obligors to pay the debt.

The State has spent close to \$400,000 since 2001 programming FACSES to support the accrual of judgment interest on unpaid child support. This figure does not include the countless hours of staff time to design, test, and implement the changes to FACSES and to train staff on those changes. With the additional law changes that became effective last January, the taxpayers have only just begun to experience the return on their investment. It would be a shame to shut down this expensive part of the system less than one year after it was finally done. In the last

state fiscal year, we collected \$505,125 in judgment interest for families and taxpayers.

As a technical matter, when judgment interest began being recorded on FACSES, a law was enacted in 2001 requiring that all child support orders include a statement "that the child support obligation will accrue interest if not timely paid." N.D.C.C. § 14-09-08.19. At the very least, this bill should be amended to repeal this section. However, even if this section is repealed, it has been in place for four years. Custodial parents will be asking questions for years why this statement in their judgment no longer holds true, and they will likely object to being treated differently than other judgment creditors.

We know that the accrual of judgment interest on child support could have an adverse affect on the total amount of unpaid child support owed in North Dakota. To minimize this affect, and in recognition of the benefits of not charging interest on unpaid child support, the Department requested legislation this session containing the following provision on judgment interest:

The public authority may suspend or waive judgment interest on an arrearage as part of an amnesty program as an incentive for satisfying a child support obligation or complying with a payment plan or if the public authority determines that the judgment interest is not collectible through commercially reasonable efforts. This subsection applies to judgment interest accruing before the effective date of this Act only if the arrearage is assigned to the public authority under section 50-09-06.1 or 50-24.1-02.1 or if the obligee provides written consent. Any judgment interest that is suspended or waived under this subsection may be reinstated by a court at any time or by the public authority if the obligor has failed to comply with a payment plan.

Engrossed 2005 House Bill 1172, Section 6 (Page 4, lines 1 through 10). The Department strongly supports this provision as an alternative to Senate Bill 2310. It retains judgment interest as an incentive for obligors to pay support and as compensation for the families, yet gives the Department authority to write-off interest that is uncollectible.

Mr. Chairman, we agree that judgment interest on child support should not grow out of control. However, enacting this bill at this time would be comparable to buying a new car, driving it home, and then putting it up on blocks until it rusts out. Let's "drive" the amnesty concept in House Bill 1172 for a few years and see how it goes. If the interest on unpaid child support grows out of control, House Bill 1172 would authorize the Department to write-off the interest as uncollectible and manage the debt. At that point, we will know better whether discontinuing judgment interest is the best way to control the amount of unpaid child support.

I would be happy to answer any questions the committee may have.