

Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman

January 16, 2019

Chairman Lee and members of the Human Services Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Department). I am here to ask for the Committee's support for Senate Bill 2115.

As mentioned last week at the Department overview, the last two years have seen an improvement in the payment rate for current support and cases with a collection on arrears. The growth in unpaid support in cases being enforced by the state has stopped, after an extended time of multi-million dollar annual increases. The Department hopes to continue these trends through administrative restructuring and efficiencies, continued improvements to our website and overall customer service, and full implementation of the change from reviewing obligations every 36 months to reviewing obligations every 18 months. Senate Bill 2115 will further these goals.

Section One: The Department opened a dialogue with the North Dakota Association of Counties to update a law that has not been changed since transfer of administration of the child support program from the counties to the state in 2007. Originally, we hoped to extend the exemption from sheriff's fees to all cases being enforced by the Department. However, given the difference among the counties in the current billing practices of sheriffs, it was decided it would be best to first update the law to make billing practices more consistent statewide and to reflect the current expectations of state's attorneys in child support cases.

Section Two: The amendments in this section update the contact information each parent is required to maintain with the Department. Obtaining e-mail addresses and cellular phone numbers will help the Department proactively communicate with customers, especially as we do more texting and develop a mobile app.

Section Three: The proposed changes in this section will avoid postponement of a child support review when other aspects of a child support order (such as the parenting time schedule or spousal support) are changed but the child support obligation has not been reviewed.

Section Four: Currently, there is a wide variety among judges and judicial districts in terms of whether the court is required to establish a child support obligation in every case where parents are requesting a divorce or are in court on other family law issues. One school of thought is that the right to support belongs to the child and should be required in all cases, which is why current law prohibits a waiver of child support. The alternative school of thought is that if neither the parents nor the Department are requesting establishment of child support, then imposition of an obligation should not be forced on the parents.

After discussing the issue with members of the Family Law Section of the State Bar Association of North Dakota and the North Dakota Judicial Conference, the language in Section Four is the Department's suggestion for authorizing a child support obligation to be held in suspense temporarily and for a simple affidavit process for re-starting the monthly accrual of child support. Other approaches could be taken, but the Department feels there is a need for a law change in some way to bring greater consistency in this area.

Sections Five and Six: These sections are proposed to be amended to be more consistent with the approach taken for other administrative appeals of state agency decisions. The Department's decision to suspend interest or suspend a license is not taken lightly, and only after a thorough case review. The Department's approach can be difficult to convey in a brief court hearing, and warrants the deferential standard of review that the court usually applies to such agency decisions.

Section Seven: North Dakota Century Code Section 14-09-09.37 was enacted because the Affordable Care Act placed responsibility to provide health insurance for a child on the parent who claimed the child as a dependent.

14-09-09.37. Allocation of tax exemption for the child.

Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must identify the person who is authorized to claim the child as a dependent for purposes of filing an income tax return.

Under the 2018 Tax Cuts and Jobs Act, personal exemptions have been repealed, and the penalty for failing to insure the child has been eliminated. Since the purpose of the statute can no longer be served, we recommend that it be repealed.

Amendment: The process for developing agency appropriation bills has changed since Senate Bill 2115 was first drafted, and a beneficial law change that would otherwise have been included in Senate Bill 2012 needs to be offered instead as an amendment to Senate Bill 2115.

The Department is required to forward payments within two business days, and most payments are distributed within one business day. This does not leave time for the incoming payment to clear the bank, and can lead to reversal of the payment after it is sent to the family. At the same time, payments can be posted to the wrong account based on human error of a third party such as an employer or a Department employee, and additional funds must be posted to the correct account. In each case, the ultimate outcome is that more child support is paid to families than is collected, and leads to an unfunded liability for the account at the state treasury into which payments are deposited and disbursements are withdrawn. Currently, these “recovery accounts” are covered by the daily float in the account, but this is not a sustainable solution. Unfortunately, federal match is not available for these business losses, and the state is liable for 100% of the cost. Although we try to recoup these

funds, we are not always successful. The total liability in recovery accounts is \$335,325 as of January 14, 2019, which includes recent recoveries as well as those that are older and are uncollectible.

Current law provides that employer penalties for failing to report new hires are deposited in the state general fund. For federal match purposes, the penalties are considered child support program income and cannot be matched like other program expenses, even though the “income” is not used to operate the program. There is no connection between employer penalties and recovery accounts, but we have identified these penalties as a source of program-related funds that can help eliminate the unfunded liability in the child support disbursement account. Over the last 34 months, a total of \$19,815 in new hire reporting penalties have been imposed in 26 compliance actions, which averages to around \$14,000 per biennium (two penalties are uncollected because the employer has gone out of business). The number of compliance actions is fairly small because we work actively with employers and take a number of steps before imposing the penalty.

The recovery balance grew by less than \$2,500 from this time last year, so the amount of funds that would be retained by the Department under the amendment would succeed in reducing the unfunded liability. We encourage your consideration of this amendment, along with a technical amendment to correct a drafting error in the bill as introduced.

In conclusion, Senate Bill 2115 will improve the efficiency of the Department’s child support program, and improve customer service, and we request a “Do Pass” recommendation of the bill with amendments.

This concludes my testimony, and I am happy to answer any questions you may have.