

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 27, 1985

The sixtieth meeting of the Senate Judiciary Committee was called to order at 10:10 a.m. on March 27, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senator Crippen.

CONSIDERATION OF HB's 438, 439, 440, 441, 442, 443, 444, 445, 446, and 447: Chairman Mazurek stated the hearing on these House Bills would be held simultaneously since the bills were similar and on the same topic. Representative Jan Brown, the sponsor of these bills, presented them to the committee in numerical order. She stated that these bills were put together as a package dictated by the federal government. These ten bills are the implementation bills for the federal Child Support Enforcement Amendment of 1984, Public Law 93-378. Federal law requires that each state have a child support program, commonly called the 4-D Agency after Title 4D of the Social Security Act. Montana's program is located within the Legal and Enforcement Division of the Department of Revenue. This agency is responsible for locating absent parents, establishing paternity, child support obligations, and collecting and monitoring child support programs. Representative Brown stated John McRae would answer any questions the committee might have. HB 438 is to offset child support debts against state income tax refunds. HB 439 is the consumer credit reporting agencies' access to child support debt information. HB 440 relates to enforcement of spousal support by the Department of Revenue. HB 441 is the enforcement of administrative child support orders through district court. HB 442 extends the paternity statute of limitations to a child's 21st year. HB 443 is the bill requiring low income withholding for delinquent child support payments. HB 444 is the notice of income withholding procedure included in all child support orders. HB 445 requires persons delinquent in child support payments to post bond. HB 446 puts liens against real and personal property for unpaid child support. HB 447 would garnish workers' compensation benefits for child support debts.

PROPOSERS: Anne Brodsky, Women's Lobbyist Fund, stated that they support all of these bills which mainly affect women. She testified that in 1980 the U.S. Census reported less than half of the people owed child support were collecting the full amount, 23 percent were receiving partial payment and 28 percent received no payment at all. There is a problem now regarding payment of child support; therefore, she stated they urged the committee to support these bills.

OPPONENTS: John Hollow, Attorney, Helena, Montana, spoke in opposition to HB 440. He cited an example of a male spouse owing a female spouse \$3,600, the woman goes on welfare, and welfare expends \$300 on this woman. When SRS collects the \$3,600, who gets the money? He also questioned what happens if a person goes on AFDC at the time of dissolution and SRS pays the \$300, but the male spouse is unemployable or injured or under employed. How can he be held responsible to reimburse this money? He feels there should be a requirement that the Department recognize there is sometimes an inability to pay. He does not feel this bill recognizes people can be down and out. He suggests there should be a language change on page 5, subsection 8, line 20, that the amount should not be any more than the man can feasibly pay. He also suggested the debt only accrue while the Department is paying assistance.

Larry Majerus, Motor Vehicle Division, Department of Justice, stated his only opposition is to HB 446, which relates to liens on motor vehicles. He stated that because of the language on line 23 of the first page which states "state agency in possession of real or personal property," they were exempted because they were not in possession of the real property, and they never possess the vehicle, so they could not transfer the title, but that language is no longer in there. Mr. McRae suggested they add the words "physical possession" to make it clearer. He stated that if they are forced to file a lien in their office, it is not on the title, and they can run into a lot of problems. The most common problem is when a vehicle is sold to a dealer, the dealer is exempt from titling and could keep the car on the lot for an average of four months. When they sell it and the buyer makes application for title, the title will then get to their office and that is when they catch there is a lien against it. This creates problems for everyone. This compounds the problem if they have to do it. He also stated that if a lien is missed by a state agency when there is a transfer of personal property, there would be a penalty to the state agency involved. He stated he felt if the bill could be cleaned up so it does not affect the way liens are placed on motor vehicles, they would have no objection to the bill.

QUESTIONS FROM THE COMMITTEE: Chairman Mazurek stated questions would be asked on each bill separately in numerical order.

Questions on HB 438: Senator Daniels asked what happens when the tax return is made out to the owing spouse and his present mate. Mr. McRae stated the injured spouse must file an amended return showing what her share is to obtain her share of the tax refund. Senator Towe asked what this procedure would give

them in addition to what they already have. Mr. McRae replied it gives them basically the same procedure for non-AFDC recipients as the AFDC recipients. He stated they are broadening the scope of the offset procedures.

Senator Towe asked Mr. McRae what the administrative order on page 2, line 24, is. Mr. McRae stated the administrative order is where the Department of Revenue has established a support obligation pursuant to the administrative hearing process in Title 4D, chapter 5, part 2.

Senator Mazurek asked if there were an administrative determination of how much child support is past due. Senator Towe asked if an administrative order can determine how much child support is due before a court determination has been made. Mr. McRae stated it can be determined through this process in the absence of a court determination. He also stated that if there is a court order, the agency is bound by that order.

Senator Mazurek questioned how this pertains to paternity cases. Mr. McRae stated they do not handle those cases until a determination as to paternity is decided by the district court.

Senator Mazurek asked what penalty the state of Montana would incur if they failed to adopt any or all of these bills. Mr. McRae replied there are some penalties that can be assessed against the AFDC monies on a sliding scale. Dennis Shober, Program Manager for the Child Support Program, stated that federal regulation states the child support system in Montana has to be in substantial compliance with the federal regulations or the penalty if we are not in compliance is that the federal portion of the AFDC funds will be reduced from one to five percent. Senator Towe asked what the nine criteria are that we have to use. Mr. Shober replied the nine criteria have not yet been established, but he is certain HB 438 through 447 encompass them.

Bill Harrington, Bureau Chief, Investigation and Enforcement Bureau, Department of Revenue, stated the nine criteria are those addressed by the bills in front of them, and in order to be in compliance, all of these bills need to be adopted.

Questions on HB 439: Senator Towe asked if the bill said the information must be made available upon request. Mr. McRae stated basically that is it--if the information is requested, it is made available.

Questions on HB 440: Senator Mazurek asked Mr. Petesch if he had compared HB 440 with SB 119. Mr. Petesch stated he had--the differences are on page 6, line 24 running through page 7, line 5--those materials are all stricken in SB 119.

Senator Mazurek asked Mr. McRae to respond to the issue raised by Mr. Hollow. Mr. McRae stated federal regulations require that all applicants for assistance assign all support payments to the state of Montana, including support accrued up to the time of assignment, past and present. He stated they would retain as much of those monies as needed to reimburse the state for any AFDC paid out; any additional monies would be reimbursed to the recipient.

Senator Towe asked what was being added on the top of page 3. Mr. McRae responded that what is being added is subsection (b) starting at line 6. Subsection (b) creates spousal maintenance and child support. Formerly it only included dependent children.

Senator Towe asked what happens if the obligor is unable to pay. Mr. McRae responded that where there is a court order in existence, we cannot modify or change that order, so the obligor is required to pay this debt. We cannot alter the order, but the obligor can seek a modification through the statutory codes. If there is no court order in effect, then we can use our scale of payments which are stated in our criteria, which are stricter than the federal requirements.

Questions on HB 441: Senator Towe asked Mr. McRae if the final administrative order will have the same status as a judgment and be allowed to have the warrant of distraint procedure apply. Mr. McRae answered that all of the states have an expedited procedure in effect. All of these expedited procedures must have the full dignity as judicial orders. At the present time, we do not have the capability of having the full recognition on the same level as a judicial order. This has created a problem for the department in the past. This bill is a practical solution to an existing problem.

Senator Towe asked if a warrant of distraint is used instead of a court order. Mr. McRae answered that they use the warrant of distraint as a tool by the state administration to file a warrant in the county where they reside, and it was given to the department by the legislature when the bill was originally passed.

Questions on HB 442: Senator Mazurek asked if Title 4D of the Social Security Act is AFDC. Mr. McRae replied it is the welfare cases plus those others who are not on welfare that apply; thus, it broadens the scope.

Questions on HB 443: Senator Towe stated at the present time we do not have a withholding provision, but there is a federal law that mandates we include it. Mr. McRae replied that in Montana, as Representative Brown referenced, they do have a withholding type bill as stipulated in Title 4D, chapter 5, subpart 2. That particular act does not meet the federal standards. By adopting HB 442, we can conform with federal requirements.

Senator Towe asked if there were a hearing procedure if this procedure does not go into effect until the obligor were one month in arrears. Mr. McRae stated there is a hearing procedure and notice procedure throughout the whole bill. Senator Towe then asked if the hearing procedure is terminated when the obligor pays. Mr. McRae replied the procedure continues, the reason being to make sure the obligor is more prompt in the future.

Senator Towe asked about discretion. Mr. McRae answered the only area of discretion is found on page 9, line 8. Senator Mazurek asked what the source of the bill was. Mr. McRae stated no model was available, so they tried to adopt procedures from available bills and use their discretion as to which was best.

Senator Towe asked if federal law required withholding of just wages or if it included a broader spectrum. Mr. McRae answered federal law only requires withholding of wages and earnings; however, the state has elected to use a broader definition and include interest income, annuities, etc. Senator Towe asked how Representative Brown felt about striking everything but wages. Representative Brown replied she would prefer it were left as is but would not object if the committee did decide to strike the other types of earnings. Senator Towe then asked that would happen if the employer failed to comply with the order. Mr. McRae stated the employer would then be held liable, because it is required by federal act that they do comply. Senator Towe asked if this withholding had priority over all other types of withholding. Mr. McRae replied in reality, it had priority over everything except federal income tax.

Questions on HB 444: Senator Mazurek asked what happens if the district judge doesn't put in the penalties for being delinquent. Mr. McRae replied he did not see this being a problem in district court. Senator Towe asked if it were his intention that the order must include a statement the obligor must comply--then the withholding procedures would commence. Mr. McRae answered the statement is used as a warning device to put the individual on notice he will be subject to withholding procedures.

Senator Mazurek asked if this language were not in the order, could someone argue these sections do not apply. Mr. McRae answered it does not affect the validity of the orders. Senator Mazurek stated he would argue the first time this comes up since it is mandatory that it be in the order, and if it's not, these provisions do not apply. He stated this bill needs looking at carefully. Mr. McRae stated this is a warning statement, and the intent is to put the person on notice that these things can happen to forestall an individual from becoming delinquent. Senator Towe asked if the federal law mandates this bill. Mr. McRae stated the language of the federal bill does provide in it that all new orders and modifications of child support orders must include some provision for income withholding. He stated it does require reference in the orders to income withholding. Senator Towe asked if this warning statement were not included (we would still be within the 75% of compliance.) Mr. McRae answered that on the compliance question, the federal language of the child support amendment requires all states to have these procedures in effect on the state level. Senator Towe suggested they strike the word "must" on line 15 and insert the word "may." Senator Mazurek stated that failure to include this statement does not affect the rights or obligations. Senator Towe stated maybe there should be a statement of intent saying it is an attempt to comply with the federal law, and we encourage every judge to do so.

Questions on HB 445: Senator Shaw said the bill states the obligor is required to post bond. He asked what happens if he failed to post this bond. Senator Mazurek replied he suspected the person would be subject to the contempt powers of the court. Mr. McRae stated that basically what Chairman Mazurek said was true--the person would be subject to the contempt powers of the court for failure to do as he had been ordered.

Senator Shaw asked if he failed to comply with the order would he be put in jail. Mr. McRae stated that is a possibility if the court chooses it as a remedy. He stated they have a task many people do not thank them for, but also on the other side of the coin, they thank them because they represent a tremendous amount of people on welfare who are on marginal earnings, cannot afford an attorney or legal representation, and they get them the child support they would not get otherwise, and the child support can make the difference of just getting by or having a decent lifestyle.

Senator Towe said on line 20 it says the court shall direct, so if the court finds they are three months in arrears, the court has no discretion. Mr. McRae replied the court has no discretion and referred to the top of page 2. Senator Towe asked if they don't have the ability to post bond, it might be a way out, but if they do have the ability to post bond, there is no discretion on the part of the court. He questioned if that were the intent. Mr. McRae stated he was correct. Senator Towe asked if it were mandated by federal law. Mr. McRae answered it is not mandated in that sense. He stated all the federal law states is we will have some procedure to impose bonds and securities upon a delinquent payer. The procedure is left up to the individual states.

Senator Daniels asked to whom the mortgage or bond would be given. Mr. McRae replied the mortgage or bond would be given to the person to whom it is owed for child support. Senator Towe asked if the beneficiary of the bond were the department or the obligee. Mr. McRae replied it is stated in the bill that the beneficiary is the person or agency which is entitled to it. Senator Towe asked if when it says a bond or securities it pertains to all areas of the codes, so that a signature bond would be adequate. Mr. McRae stated any process by which a bond or security can be made is applicable.

Senator Yellowtail asked whether the amount of time for delinquencies was specified by federal law. Mr. McRae stated the only one that is required is the equivalent of one month's delinquency in the income withholding bill. Mr. McRae stated there was no time limit other than the ones that we set in our discretion. Senator Yellowtail asked if the legislature has the discretion to set three months or six months or whatever for a time limit. Mr. McRae answered this was corrent.

Questions on HB 446: This is the line against personal property. Senator Towe asked if subparagraph (1) says there is the authority to impose a lien and subparagraph (3) is the procedure to impose the lien, but that subparagraph (1)

does not impose the lien. Mr. McRae stated that was his understanding. Senator Towe asked if on line 15, page 2, they couldn't simply say "imposed under subsection (3)" for clarification. Mr. McRae stated they are trying to include all cases where an arrearage may come about in the particular case, whether a divorce case or any other example of attorney cases. Senator Towe stated this needed to be clarified because lien laws in general are very sticky. Senator Daniels asked if this were a lien upon a lien. He further remarked when there is a divorce, a lien is put on the obligor. Mr. McRae replied that when a divorce decree is handed down, ordering child support obligations as with any other lien ordering payment of monies or any other judgment ordering the payment of monies, a general judgment lien is created, but that lien only applies to realty in the county in which the lien is created. In order to meet federal requirements, there must be a lien also against personal property of the obligor. He further stated, therefore, we have to expand the present definition. The federal regulations do not state how to do this; they simply say the states have to implement procedures to put a lien against both real and personal property when there is a support obligation owing. This type of lien has a higher priority than the judgment lien.

Senator Mazurek asked if the general lien would apply statewide, even though it may have been filed in Lewis and Clark County. He also asked if it would include all of the property that person may own, if the judgment were handed down in one county and the person resides in another county, how the person is notified. Mr. McRae stated the lien procedure cannot be put into effect until the person has been located and notified about the procedure. He also stated that if the property has come into the hands of a third party, that party would be notified and would have to hold that property until all necessary procedures could be taken to process the lien.

Senator Towe asked what was meant by priority. If judgment lien has priority from the date of entry, were they suggesting something more than that? Mr. McRae answered it is not the priority of when the judgment takes effect but has a higher level of priority. A support judgment has a higher priority than a judgment lien; it has the priority of a secured creditor. Senator Mazurek asked what kind of secured lien: security interest holder or some other type of secured creditor? Mr. McRae answered this would be an unperfected type of security interest priority.

Senator Towe asked what the federal law says at this point. Mr. McRae stated the federal law only states that there be a procedure to file a lien on personal or real property against the delinquent parent for child support.

Senator Towe asked if Mr. McRae would answer Mr. Majerus' question of imposing a lien on motor vehicles. Mr. McRae replied to his knowledge the best way would be to have the person be required to produce the title of the motor vehicle; in that way, the lien could be placed on the title by order of the court.

Questions on HB 447: Senator Towe asked if only welfare children could receive 50 percent of the workers' compensation benefits or did it apply to others as well. Mr. McRae stated the intent of this bill was to limit this procedure to those cases being pursued under Title 4D, which includes not only the welfare cases but anyone who has applied for their services. The reason this was restricted was because of the additional controls they have over their process to prevent any abuse of workers' compensation. He stated they have worked with the Workers' Compensation Division to build in some safeguards.

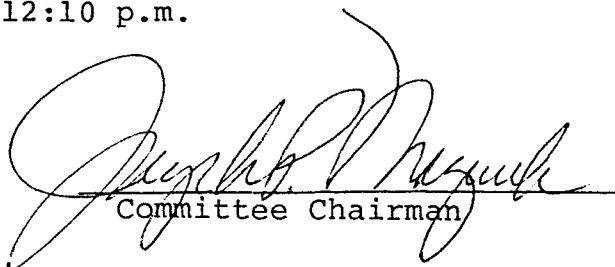
Senator Towe asked how the department arrived at the figure of 50 percent. Mr. McRae replied they had not put that figure in; the amount was arrived at by the House committee; however, he stated it was probably based on the garnishment laws of the federal government which limit garnishment to 50 percent.

Senator Towe asked Gary Blewett, Administrator of the Workers' Compensation Division of Labor and Industry, to comment on this subject. Mr. Blewett stated they had no problem with this bill, and it was one they could administer as it is much like other things they do now.

CLOSING STATEMENT: Representative Brown stated that in working on these bills, many other questions about child support were raised, such as, whether visitation rights should be tied to child support. Also, in compliance with federal law, the governor appointed a Child Support Enforcement Advisory Council. She further stated this council is seeking public input in the whole area of child support. She felt there would be further legislation brought up in the next legislative session.

Mr. Petesch, was asked to look at the law and report back to the committee.

There being no further business to come before the committee, the meeting was adjourned at 12:10 p.m.


Committee Chairman

DATE March 27, 1985

COMMITTEE ON Judiciary

AB 438-447

VISITORS' REGISTER

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(Please leave prepared statement with Secretary)