

Child Support Enforcement Business Relations Task Force  
March 29, 2010  
8:30 a.m. – 11:35 a.m.  
Comfort Suites

Task Force Members in Attendance: Paula Bachmeier, Bill Devlin, Jim Fleming, Harlan Fuglesten, Jim Goetz, Dale Haake, Senator Judy Lee, Jeb Oehlke, Mike Schwindt, Representative Robin Weisz

Task Force Member Absent: Mike Rud

Staff: Barbara Reiersen, Brianne Skachenko

Visitors: Bob Graveline, Jack McDonald, Steve Spilde, Pat Ward

## 1. Approval of Minutes

Fleming suggested the following change to page one of the February 9, 2010, Task Force meeting minutes: Fleming said the ND Child Support Enforcement program (CSE) is matching with public utilities electric and telephone cooperatives. The minutes were approved with this change.

Schwindt said the next meeting is scheduled for May 11, 2010. He asked if there any issues with meeting at 8:30 a.m. Senator Lee said there are some issues with 8:30 Monday meetings. Schwindt said the next 8:30 a.m. meeting is scheduled for a Tuesday.

### a. Recap of previous action on Bill Drafts 4 through 7

Schwindt said that the Governor's budget instructions are not out yet. Schwindt and Fleming do have to vote against any proposed legislation that involves an appropriation.

Fleming distributed the handouts for the meeting, most of which go behind Tab 16. There was another change to the member list (i.e., to Devlin's address) which is behind Tab 2. Senator Lee asked that her home number (701-282-6512) rather than her work number be listed. Her number should be penciled in; she said the list does not need to be revised.

Bill drafts are filed behind Tab 15.

Fleming said that during the February 9, 2010, meeting the Task Force voted:

- Not to proceed with bill draft #4 relating to reimbursement for withholding child support. The bill draft was viewed as not likely to be successful.
- To move forward with bill draft #5 relating to electronic remittal of funds withheld for child support.

- To move forward with bill draft #6 relating to electronic reporting of new hires (and reporting whether the employer offers health insurance).
- To move forward with bill draft #7 relating to reporting of hiring of independent contractors.

Fleming said bill drafts #5, #6, and #7 are awaiting final approval and will be voted on later in the meeting.

## **2. Review and Confirmation of Requested Changes to Bill Draft 3 regarding Financial Institution reimbursement**

Fleming reviewed bill draft #3 regarding reimbursement to financial institutions. This bill draft does not propose a fee of a specific amount. It simply allows financial institutions to retain a fee. The fee would be negotiated by the bank and obligor or the bank would determine the cost. Section 1 allows financial institutions to deduct a fee for a lien against an account. Section 2 addresses how money that was frozen is seized by Child Support Enforcement (CSE). The language clarifies the surrender of the property. The surrender provides another opportunity for the financial institution to deduct a fee.

Fleming said that CSE would issue a lien. The financial institution could charge the obligor a fee for the lien. If the obligor doesn't pay the arrears or enter into negotiation with CSE, CSE would demand the surrender of property. The financial institution could charge the obligor another fee for the demand.

Fleming said that section 3 requires the match. The fee paid to financial institutions would be subject to the available appropriation, actual cost or \$250, whichever is less.

Fleming said another process CSE can use to seize the funds is to issue a deduction order, instead of issuing a lien and demand. The one-step deduction order process works well for accounts such as savings account. The thought is the obligor shouldn't be saving when arrears are owed. CSE would be more likely to do a lien and demand for a checking account. Currently, financial institutions can charge the obligor \$3 for a deduction order. This bill draft would change the \$3 limit to no limit. Section 5 addresses reimbursement for financial institutions. CSE is funded with 34% state funds and 66% federal funds. The reimbursement amount on the previous bill draft was left blank and this was tabled until some figures could be pulled together. This bill draft includes an appropriation clause and Fleming plugged in numbers for discussion purposes. Materials the Task Force previously received included a table that Fleming used to generate the numbers he used in the current bill draft. McDonald asked if the state/federal percentages change. Schwindt said they have not.

Goetz said he and the banking industry were fine with the reimbursement in the bill draft. As Representative Weisz said during the last meeting, if an obligor doesn't like the fee the obligor can find another bank. This is different than fees imposed by employers; generally employees can't leave a job just because they disagree with an income withholding fee. The fees charged by financial institutions may be a deterrent

that encourages obligors to pay their child support. Schwindt said this would open the fees to competition. Fugelsten asked if financial institutions would discuss fees upfront with obligors. Goetz said banks have to disclose all fees. Schwindt asked what happens if the fee changes. Goetz said banks are required to give a 30 day notice but generally give a 45 day notice to be safe. Senator Lee expressed concerns with no limit on fees charged by financial institutions. She doesn't think the Legislature will be comfortable with fees with no limits. Also, in the current national environment, there is not much support for financial institution fees. Schwindt asked if Senator Lee's concerns are with the fees financial institutions would charge or with the reimbursement that would be paid to financial institutions for conducting the match. Senator Lee said she is concerned about both. There are a lot of different groups and people who do things now to see that child support is paid. Goetz said businesses are paid for collecting sales tax. If someone was asked to paint the Governor's house, they would be paid. Senator said these are not the same. Fugelsten asked what the fee would be, what the market would bear. Goetz thought the fee would be in the \$5 range. He likes having no fee listed so there isn't a need to go back to the Legislature to address inflation. Haake asked what would happen if there was a cap, for example, of \$10. Goetz didn't have a problem with that. This should be an amount that would allow a financial institution to recoup costs, not to be a profit center. It was agreed this should not be a profit center.

Schwindt asked if there was an amendment regarding a cap not to exceed a certain dollar amount. Haake made a motion for an amendment to add a cap not to exceed \$10. Bachmeier seconded the motion. There was discussion about a cap. Senator Lee said that cap would likely be changed by the Legislature. Making a change from the current \$3 to \$10 gives a lot of room for financial institutions to move. Goetz said legislators get paid to sit in their seats, and they are underpaid for doing so. People can't be expected to do something for nothing. Fleming said he prefers a cap to no cap. Representative Weisz said business pay for a lot of things they do as a cost of doing business. The Task Force needs to be careful it is not saying that businesses have to be reimbursed for complying with rules and regulations. When fees cut across all businesses there is an even playing field and completion is equal. He thinks there will be a lot of resistance to fees and that financial institutions could lose the sympathy of legislators in the process. Financial institutions could end up getting nothing. Goetz said there are fees with subpoenas and garnishments now. In ND we want to be friendly to businesses. Senator Lee said ND is very friendly to business. This fee wouldn't put us over the top. Goetz said reimbursement is good for the state. Devlin said through the administrative rules process some group is always wishing to increase fees. He thinks the banking industry is looking at a public relations nightmare if they look to increase fees. Goetz disagreed. Devlin said in the current environment financial institutions don't have a good reputation. People are not very sympathetic when it comes to financial institutions. It is better with a cap but he thinks reimbursement will die in the Legislature. Goetz said that community banks didn't play into the national banking crisis.

Senator Lee asked how investment accounts are treated. For example, are they treated like other financial accounts? Schwindt said CSE can seize investment accounts. Fleming said 'financial institution' and financial 'accounts' have broad definitions. Goetz asked if CSE matches with all brokerage companies. Schwindt said those matches are done at the federal level. Questions were asked about 401Ks. Fleming said if the obligor doesn't pay off the arrears after receiving the notice of lien, CSE can seize the asset and the obligor pays the penalty. Schwindt said some obligors will mortgage their homes to pay off their arrears rather than give up their 401Ks.

Senator Lee asked if financial institutions other than banks are talking about fees. Schwindt said they are not. Fugelsten asked if there was any remedial measure to meet in the middle on reimbursement. Devlin said he hasn't been in the Legislature for four years but he would be surprised if banks were allowed to increase their fees. He said there should be a \$10 cap. He said this will open the door to other professions asking for an increase in fees to cover their costs. Fugelsten asked if the \$100,000 is part of the issue. Devlin doesn't think the Legislature will approve the \$100,000 in general funds.

The vote on the motion for an amendment to put a cap, not to exceed \$10 was:  
Yes: Bachmeier, Devlin, Fugelsten, Goetz, Haake, Senator Lee, Representative Weisz, Fleming, Schwindt. Absent: Oehlke, Rud. Motion carried.

The vote on bill draft #3 with the \$10 cap was:  
Yes: Bachmeier, Goetz, Haake, Representative Weisz. No: Devlin, Fugelsten, Senator Lee, Fleming, Schwindt. Absent: Oehlke, Rud. Motion failed.

Fleming said the Final Report summary will show there was disagreement on bill draft #3. Goetz asked what happens if Rud and Oehlke are at the next meeting. Can that change the vote? Schwindt said someone from the majority would need to change their position. Senator Lee said banks can always look for a sponsor for a bill. The recommendation just wouldn't come from the Task Force. Goetz said it would be good if the Task Force would support it.

Representative Weisz asked if there are fees when wages are garnished. McDonald said there is a \$10 or \$15 fee. If wages are garnished the garnishment fee is sent to the employer or bank. The employer must do the garnishment or becomes liable. Representative Weisz asked who pays the \$10 fee. McDonald said the judgment plaintiff, the debtor does. Representative Weisz said if other groups can freeze accounts, for example the IRS. Would the bank be allowed to change a fee when the IRS seized an account? Goetz didn't know. Representative Weisz said that would be good information to have if this goes before the Legislature. There may be more support if banks could say these weren't being treated differently than actions by any other group.

Schwindt said this may be a possible reconsideration for next meeting but at this point it is dead.

### 3. Discussion of Bill Draft 2 – Insurance Matching

Fleming reviewed bill draft #2 dealing with the insurance match. He noted some of the changes. Per Haake's comments at the February 9, 2010, Task Force meeting he added regulation language regarding patterns of behavior. Some members saw the last draft as penalizing companies but CSE is looking at penalizing agents, not companies. This bill draft would not look to make companies liable for the actions of its employees. The current bill draft takes the individual approach.

Fleming said the Task Force is on the verge of a stalemate regarding mandatory vs. voluntary participation. It appears there will likely not consensus on this issue. The current bill draft is a mandatory compliance bill with items for discussion.

Fleming said some previously identified issues dealt with Identity theft and whether insurance companies can get social security numbers (SSNs). SSNs are very helpful to CSE because they are a unique number. CSE doesn't have dates of birth for all obligors. When you have an SSN, a date of birth and name aren't needed to do a match. Names can change and this is a problem with identifying people. CSE also doesn't always have an address or a current address because addresses can change. CSE has online access to ND Department of Transportation's (DOT's) drivers license database. If the person has a ND drivers license, CSE can match on it. The same holds true with some Game and Fish licenses. If CSE has a date of birth, the last four digits of the SSN, and the person's first or last name, CSE can generally match up with the person. Currently, the CSE automated system can't search by date of birth. Also, if the person has a Minnesota drivers license, CSE doesn't have access to the Minnesota drivers license database. The language in the current bill draft is that if CSE does not get the SSN the drivers license number must be provided. Fugelsten suggested the language about the department of transportation may be misleading because it sounds generic (i.e., it sounds like the department of transportation in any state). Fleming said he didn't know how to get around Legislative Council drafting rules, which would not allow the language 'ND Department of Transportation.' Fugelsten asked how the public would interpret this language (i.e., how they would know this is limited to ND DOT). Could the language 'department of transportation for ND' be used? The public needs to be able to understand the law. Fleming suggested referencing the 'department of transportation under title 39.' Fugelsten suggested the language 'of this state.'

Ward said insurance companies don't always have an SSN. An accident report has a drivers license number for the driver but not a drivers license number or SSN for a passenger. Haake said insurance companies never get SSNs now and there is no need to get a drivers license number. The insurance companies can get the date of birth. Schwindt asked about getting the last four digits of the SSN. Haake said that was better than getting the whole SSN but people will still ask why any of the SSN is needed. Fleming reminded the Task Force that the further away we get from using the SSN, the harder it will be for insurance companies to match up with a national database. Insurance companies can't get an immediate return without an SSN. Names

are so subject to change. Haake understands CSE's desire but the realities for CSE and the insurance industries are different. He had no suggestions as to what is a foolproof way to identify people but yet allow the insurance industry to gather information without upsetting people. Senator Lee said more people are geared up to give the last four digits of their SSNs. Haake said that is more palatable. Ward asked if the obligors trying to avoid detection are the people least likely to provide their SSNs. Schwindt said if individuals are looking to get paid they need to provide the information.

Goetz said recently it was announced that ND has the cheapest car insurance in the nation. This was in today's paper. A concern is doing something that will make people pay more for insurance. It was mentioned that the comparison of states is a little misleading.

Ward pointed out some typos in bill draft #3. He also asked why CSE wants insurance companies to report people who are owed child support. Fleming said so CSE can get their addresses. For example, CSE may be holding support payments because there is no address for the obligee. Schwindt said finding addresses was a benefit of the Fargo class action suit.

Haake said on page 1 line 11 the concept of the carrier comparing the information of the person was added. Fleming said this section was not changed. It is not perfect wording but the match can go in two directions. The insurance company or CSE can do the match. For example, CSE's vendor can provide a list to the industry and the industry can do the match. Haake asked what happens if there is not a match. Can the insurance company just go on with their process? Fleming said yes. Haake asked if there is a hit now if CSE notifies the obligor of the lien against the settlement. Fleming said CSE does. Haake asked if an exception could be inserted saying the obligor does not need to be given notice of the lien. The problem comes when settling a claim and the obligor is put on notice prior to the settlement. This is not fair. He suggested doing the settlement and then paying CSE and the obligor. This may sound somewhat sneaky and it is meant as a way to get around notifying the obligor of the lien until after the settlement. Fleming said there are due process considerations. Some things can be done post process. The statute is about getting information to the obligor about the lien. Right now CSE has agreed with Haake's company to delay the notice of lien until the company is ready to make the payout. This is a process that is also used with Risk Management. This way the obligor has negotiated the settlement before the notice of lien.

Haake said 10 days can be critical in negotiation. 10 days is a short time when negotiating but it is a long time between agreement and pay out. Ward said part of closing a settlement deal is getting the check right away. Haake said it is very common for the person to want the check the same day. Fleming said 10 days is the time frame to notify CSE of the claim, not the pay off amount.

Fleming said regarding the notice of lien that CSE can coordinate with the insurance company on short notice. If there is an arrangement like CSE has with Nodak Mutual,

CSE will send the notice of lien in the time specified by the insurance company. CSE needs to send the notice of lien to the company and the obligor close in time but not necessarily instantaneously. Haake is aware of the current process and is looking at trickiness of coordination. When juggling like this, something can be dropped.

Representative Weisz asked if insurance companies deal with liens from the IRS and others. Haake said the only liens they receive are related to the bodily injury. Even Medicare liens are specific to injuries in the accident. Blue Cross Blue Shield (BCBS) also does liens. Ward said with those liens BCBS is also listed as a payee on the check. Unfortunately, there are the same concerns with other liens as with CSE liens. Haake said claimants know that these other groups have liens, for example, medical liens. With CSE, obligors want the injury covered, plus money beyond that amount to pay off their child support arrears. With CSE liens, obligors want money that has nothing to do with the accident. This is different than other liens. Representative Weisz asked if these issues have come up with any other types of liens. Haake said no. Fleming said a possibility was delayed provision of the notice of lien to the obligor (i.e., to send the notice of lien to the insurance company first). Current law says CSE has to provide notice at the same time. Haake said that is a problem. There are problems with not sending the notice of lien to the obligor until settlement. An option would be for CSE to send two copies of the notice of lien to the insurance company and the insurance company would forward the notice of lien to obligor. Haake asked if the notice of lien would be given to the obligor at the time of settlement or at the time of payment. These two events could be at the same or different times. Senator Lee said insurance companies don't want to look like they are working for CSE. Will this be the impression if they provide the notice of lien to the obligor? Is this an issue for insurers? Haake said the obligor will be upset with the person who gives them the lien.

Senator Lee asked how long it would be between the filing of the lien and the notice of lien to the obligor. Would the lien show on the lien registry the next day? Fleming said if the lien could be filed prior to the obligor's notice of lien, the notice could still be sent to the obligor the same day. For example, the notice of lien could be faxed to the insurer and mailed to the obligor. Senator Lee said there can be issues with delivery by the post office. Haake asked if when signing settlement documents the insurance company would have to provide the notice of lien to the obligor before, after, or at the same time the settlement is signed. Fleming said that constitutionally, notice has to be provided when encumbering an asset. The notice could be given anytime from when there was a deal until the check is written. The notice of lien could be given to the obligor at same time or before the obligor got the check.

Haake provided the following scenario. The insurance company receives a phone call from the obligor's attorney. The attorney says the client has agreed to the settlement and the obligor signs the settlement document. The insurance company issues the check, encloses the notice of lien with the settlement check, and mails them to the attorney. Would this be appropriate? Fleming said changes to the general lien statute would be needed. A lot of this depends on how the lien registry plays out. The lien registry could provide this information. Senator Lee thinks the details would need to be

figured out so the insurance industry does not get grief for their role in the process. Haake said insurance companies can live with the grief, but not the expense. Senator Lee said this process needs to work without being burdensome or resulting in the insurance industry getting hammered. Haake said administrative costs are an issue but the impact on the insured is the biggest concern. Fugelsten said as a former insurance attorney he has sympathy for Haake. Once this happens to obligors' attorneys a few times those attorneys will start asking questions about child support obligations prior to settlement. Haake agreed the attorneys would catch on quickly.

Haake supports the insurance match on a voluntary basis. Schwindt said he appreciates that. Fleming said CSE hopes to make the bill more palatable by trying to work with the SSN concerns. The \$500 language was also removed from this bill draft. In subsection 6, information was added about the 'individual' and 'willfully.' This was to address compliance with the individual rather than with the company and to look at willful noncompliance. Haake said he is more comfortable with the bill draft containing these changes. Fleming talked about the order to show cause process. Spilde said typically agents are not involved with claims. Haake said claims adjusters generally aren't the ones cutting the checks.

Fleming asked the Task Force members what their feelings were about limiting the requirement to providing the drivers license number. Senator Lee asked what happens if a person doesn't have a drivers license. Haake asked if there is a history of prior drivers licenses. Ward said people without drivers licenses have a higher incidence of accidents. Representative Weisz said now when people lose their driving privileges they keep their licenses, they don't turn in their licenses anymore. The license may just be suspended. He wasn't aware of how these licenses are treated at renewal time. Haake said getting a drivers license number is easier than getting an SSN. Fleming suggested, if the person doesn't have a drivers license, an SSN would have to be provided. He reminded the group the lien registry is looking at an SSN match so the insurer would have to have an SSN to check the lien registry. Ward said if this bill passes, insurance companies will need to change their practices. Often families are in accidents. Young children in a family won't have drivers licenses. This bill would mean insurance companies will have to ask for information on all passengers. Currently, the highway patrol doesn't ask for information from all passengers.

Schwindt suggested a hold be put on discussion until later in the day when the lien registry is discussed.

#### **4. Discussion of Bill Draft 1 – Lien Registry**

Fleming reviewed bill draft #1. He apologized for the error in the bill draft he sent out earlier. The earlier draft omitted reference to public access.

Fleming said the lien registry addresses real property regardless of the county where it is located and titled personal property. During the February 9, 2010, Task Force meeting the difference between the lien registry and arrears registry was discussed.

The discussion during that meeting was that the lien registry should be a listing of liens that already exist. Unfortunately, Fleming couldn't find a way to make that happen in a bill draft. Under law, if arrears are docketed with the clerk of court, there is a lien on real property. The arrears registry is arrears of more than two months or \$2,000, whichever is less. This means there would have to be separate lists for liens on real and titled personal property. Bill draft #1 recognizes liens by operation of law. Bill draft #1a limits the arrears registry to liens on real property. Liens on real property are not affected by the arrears registry.

Fleming talked further about bill draft #1. The lien registry would be available to the public, as long as they have an SSN to plug into it. During the February 9, 2010, Task Force meeting the opinion was that if the obligor doesn't want the public to know about the arrears the arrears should be paid off. This is different than the philosophy behind the most wanted poster. This bill draft address obligors who owe past due support and CSE is enforcing. Non IV-D cases (i.e., clerk of court only cases) aren't enforced by IV-D; the only enforcement CSE does for nonIV-D cases is issue income withholding orders. The lien registry would only look at balances owed in IV-D cases. IV-D refers to Title IV-D of the Social Security Act. For example, if an obligor owed arrears on two IV-D cases and one nonIV-D case, only the arrears from the two IV-D cases would show on the lien registry. NonIV-D cases could continue to be registered with clerks of court.

Representative Weisz asked how this would work if there was no dollar limit. For example, an employer doesn't pay on time so the obligor has arrears. Would this obligor be on the arrears registry only because the employer was 10 days late remitting the support? Fleming said the person would not be on the lien registry for being 10 days late with payment – unless the 10 days crossed the end of the month.

Representative Weisz said arrears are past-due the day after they are due. Fleming said CSE's definition of past-due support is that arrears are not paid in the month they are due. This is why a person would be on the lien registry if the late payment didn't come in until the following month. In this example, when the employer's payment was received, the obligor would come off the lien registry when it was updated. Wisconsin keeps a history on its Web site. ND could do this too but it would be more costly.

Displaying information real time is easier and cheaper. Senator Lee said she is more comfortable without a history on the lien registry.

Fugelsten asked if the lien registry can only be accessed by SSN. Fleming said that is correct. An SSN would be needed to access it.

Bachmeier said some names are very common and that makes identifying the individual in question difficult. Fleming and Schwindt talked about the need to be careful about identifying people and what can happen if there is an error in identification. Senator Lee said in real estate there are also issues with identification by name. In some cases liens have been put on all people with the same name. This can cause huge problems for people.

Fleming said during the February 9, 2010, Task Force meeting the issue of admissibility of information from the Web site was raised. The screen print would indicate the real time date and time the report was generated.

Bachmeier said they also run a pre-closing search. The Tax Department updates its information at night. Schwindt said the CSE automated system also updates at night. Bachmeier said it is important the information on the lien registry not change during the day.

Fleming said the bill draft subordination language was added to meet concerns previously raised in that area. Goetz said the 'within 30 days' is a problem. It can take 6 – 10 weeks to get a title. He also provided the example of a good farmer where the bank takes a security agreement but doesn't file it because it trusts the farmer to bring the checks from the sale of livestock to the bank. He asked what the 30 days matter. Fleming said at some point CSE will take an action. In Goetz's example, the bank did not perfect the lien so CSE would be and stay ahead of the bank. The bank would have had to have taken steps to perfect the lien before it could ask CSE to subordinate its lien. Senator Lee asked if Goetz had any suggestions. Goetz asked how he will know that CSE has a lien. Fleming said the bank would need to check the lien registry twice, once before taking the security interest and then when it gets the title back. McDonald said farm suppliers liens are 90 days. Goetz asked how many days CSE can go out before it is a problem. He would like that maximum number of days that don't cause problems for CSE. Schwindt said CSE would look at that. He didn't have an answer today. Senator Lee said it would be good to have this information before the next legislative session because the number of days may change during the session.

Senator Lee made a motion the 30 days be changed to 90 days. Fugelsten seconded the motion. During discussion Fleming said he is experiencing the wait for a vehicle title. Goetz said he has one he has been waiting for since December.

The vote on the motion to change the days from 30 to 90 was:

Yes: Bachmeier, Devlin, Fugelsten, Goetz, Haake, Senator Lee, Oehlke, Representative Weisz, Fleming, Schwindt. Absent: Rud. Motion carried.

Fleming said there are no additional steps for real property. The Department of Transportation process continues for vehicles. CSE continues to have the title marked. The vessel process is the same but some conforming changes will be needed. Bill draft #1 would be better for CSE. Obligors can pay off their balance if they don't want to be on the lien registry.

Representative Weisz has concerns about obligors on the lien registry who want small loans. The financial institution may feel the security is adequate for the child support lien and the loan but the arrears can grow, significantly. Financial institutions may feel uncomfortable making these loans because the arrears can grow so rapidly and the financial institution loan would be behind the CSE lien. Fleming said CSE could chose to subordinate its lien. This was not reflected in this bill draft. How prevalent is it for a

first lien to increase? He thought this was fairly standard. Bachmeier said every lien has an increase.

Representative Weisz said he is still concerned about small short term loans made based on small assets. For example, the CSE lien is for \$2,500, obligor then gets small loan for \$2,500, and later another \$2,500 in arrears accrues. He feels that CSE should be paid the first \$2,500, then the second lien holder (i.e., the financial institution) should be paid its \$2,500, and finally the rest of the arrears should be paid. Fleming said how workable this would be would depend on how it was done. To age debts on the Web site (i.e., on the lien registry) would be difficult. The bill draft could require subordination if certain facts exist. McDonald suggested locking in subordination with a date. That doesn't have to be shown on the screen. The danger with child support arrears is the potential amount of the increase. Usually an interest increase is being dealt with but here we are talking about arrears increasing. Fleming said a problem is that the CSE automated system does not store screens every day. It would not be easy to show the amount of arrears owed for a given day in the past. Also, different types of payments are distributed differently. For example, tax offset payments pay off older arrears first, instead of paying current support first. If the lender does a lien registry screen print it could provide that to CSE and request subordination. Goetz said it would be nice if that happened automatically and was only given if needed in the future. Fleming asked how CSE would know about the other lien. Goetz said the bank would be on the title, along with CSE. He suggested keeping a running file regarding this so it can be reconstructed. Fleming said this could be done, but not easily. There are so many transactions.

Representative Weisz said he is comfortable with his earlier suggestion when it comes to vehicles. For example, CSE has the first lien and someone else has a second lien. CSE sells the vehicle. His earlier suggestion was that CSE keep \$2,500, the second lien holder gets its \$2,500, and what's left goes to CSE. Schwindt asked if this would ignore which debts are paid. Fleming said there are different distribution rules with assigned and unassigned debts but he thinks this would be doable. Representative Weisz said his concern is that CSE liens are not for specific amounts. Schwindt said CSE will take this suggestion and try to make it work. CSE won't though go back to the original debt; CSE will only look at the amount.

Senator Lee asked if the ideas of the Task Force were clear enough to develop another bill draft. Schwindt said there seemed to be consensus on Representative Weisz's suggestion.

Goetz asked what would happen if the CSE lien was for \$2,500, the obligor gets a loan for \$5,000 (\$2,500 of which is used to pay off the CSE lien), and then later accrues more arrears. The loan from the bank paid off the first \$2,500 CSE lien so the obligor came off the lien registry. Later arrears accrue again. What is the priority of the bank and CSE liens? Schwindt said this would be like selling stock.

Bachmeier said the lien registry must do the following: post for the date, show the obligor's name, show a 'not found,' and only load once a day. Generally they have an SSN but not always. McDonald said an SSN is needed for a 1099. Bachmeier said the form the realtor hands to the seller requests SSNs. Buyers and sellers are required to provide SSNs but some are still reluctant to do so. They do their best to get SSNs and ascertain who the correct person is. Fleming said the lien registry will require that all nine digits of the SSN be entered, however, the Web site screen print out could mask all but the last four numbers of the SSN. When asked, Fleming said CSE has SSNs for most people. Fugelsten asked what happens if an obligor makes up an SSN. What if you end up with the wrong person but your screen print only shows the last 4 digits of the SSN?

Fleming will revise bill draft #1 with the change from 30 to 90 days.

The discussion moved back to the insurance match. Fleming said the language could be changed to 'any real or titled person property or insurance claim.' Schwindt asked if the lien registry would work for the insurance industry. Haake thought it could be a good option available to carriers. He thought it was preferable for the industry to have access to a database rather than having to do a mandatory data match. This would be a manual option available for carriers when they are close to the time of settlement. This could be one of several options. Fleming said the bill draft as written is for a mandatory match. With the lien registry the lien is by operation of law so participation would not be optional if the insurance industry is added to bill draft 1. Haake understood that but believes voluntary participation with carriers is the best way to go. If certain processes can be more workable and there is less exposure for carriers, the number of carriers who will participate voluntarily will increase but if this is going to be mandatory, he wants bill draft #1 to include insurance claims. Fleming said if it is a voluntary match he doesn't know if insurance claims need to be listed in bill draft #1. The lien information will be on the public Web site.

Haake asked if a lien will be created if a person has no real property or titled personal property. Fleming said it would not. Haake asked how a lien would be established on untitled, miscellaneous property. If bill draft #1 was passed and the insurance match was not mandatory, the Web site would still be there for insurance companies to use. Haake said the information on the lien registry would be there but the lien would not have been created. He didn't feel comfortable with that.

Fugelsten reminded the group that the lien registry can't be accessed if you don't have an SSN. Bachmeier said she had missed that an SSN was required. Senator Lee said you have to have an SSN to accurately identify the person. This is one of those things where the SSN was designed to be used.

Haake asked if it would be possible to create a partial search on things other than the SSN, for example name, address and date of birth. If there was a match on a partial search the person could do further investigation to determine if it was the right person. Fleming said to do a match on a name, date of birth, or address would mean CSE

would have to have that same information for a match to be found. This would be really hard to do with, for example, address. There are lots of name changes so even a name search has its issues. There is potential for a partial screening tool but if a match wasn't found it wouldn't mean there wasn't a match. It would just mean that the CSE automated system didn't have the same data elements. Haake said that brings the group back to the stumbling block of requiring SSNs and irritating the situation with why an SSN is needed.

Representative Weisz asked if a 1099 is needed for insurance claims. Haake said no, it is not income. The settlement takes a person back to where he/she was, makes him/her whole so it is not income. Spilde said that is why insurance claims are not the perfect funds for CSE to pursue. Haake said the objectives of CSE and the 3<sup>rd</sup> party are different. Oehlke asked if CSE should be pursuing these settlements if they weren't considered to be income. Haake said it is an asset. Fleming gave the example of an adjuster who had attended a presentation about seizure of insurance proceeds. After the session this adjuster contacted CSE to report that an obligor would be receiving a property insurance settlement but did not intend to rebuild the home. This claim was used to pay the obligor's arrears. Representative Weisz asked if CSE could have seized the money if the obligor had intended to rebuild the home. Fleming said CSE could but would generally choose not to. CSE does not want to get in the road of people who want to rebuild or repair their property. Representative Weisz said he would not want CSE to get in the way of people rebuilding and repairing property. Under the new lien registry, if an obligor had hail damage to his/her roof, would the insurance company take it out of the check? Would the insurance company have to check with CSE to see if CSE was going to pursue it? Ward said the bill draft address bodily injury claims. This would have to be referenced in this bill draft if the intent is bodily injury claims only.

Haake said having to have a full SSN under bill draft #1 really cuts back on its effectiveness of use. Schwindt asked about drivers license instead. Haake said that would help. However, it would not help with other people in the vehicle. Schwindt said something is needed to start the process. The insurance match is working in other states. Haake said if a partial search could be done that would be a tip off. He thinks that might help with industry acceptance.

Bachmeier said judgment creditors are by name only and they then need to ascertain if it is the right person. They use an affidavit of identity. It would be good if they could then go back to CSE to determine if it is the same person. Representative Weisz said if only the name doesn't match then don't think there is a match. Bachmeier said once she creates a lien she is responsible. Schwindt said if someone does the best they can with the information they have, no one can place blame. The insurance industry is different than what Bachmeier is dealing with. This go round it shouldn't be perfection or nothing. Let's start with something now and polish it in later sessions. The winners will be kids and taxpayers. Representative Weisz said this will work if it's okay if some are missed as long as people are trying.

Representative Weisz asked if an obligor can force payment of the lien. CSE may be forgiving but can the obligor pursue it? Schwindt said this would be double dipping. If due diligence this should not be an issue. Language could be added to the bill draft saying that if the process is done right and CSE forgives, the obligor doesn't have standing. Representative Weisz agreed there should be hold harmless language.

Haake referenced bill draft #1 section 4. He found the language 'unless the context indicates otherwise' confusing. Fleming said this language is used because some of the references are applicable (e.g., contempt) and some aren't (e.g., refusal to employ). Fugelsten thought this language didn't fit in the middle of immunity language. Perhaps a separate sentence would work. Haake suggested language along the lines of 'immune except for.' Fleming asked if these should be put in separate sections. Senator Lee suggested making two sentences. Fugelsten didn't think the two should go together. Haake said it needs to clarify people acting in good faith. Representative Weisz said it protects from the CSE side but he didn't know if it protects against private actions. Fleming said he added the language in section 4 because this is where it says if a person complies, they are not liable. They are immune from liability and if they honor the requirement their liability is discharged. Fugelsten asked how can you do both. Bachmeier said from an obligee perspective if the entity doesn't withhold, CSE may be forgiving but what if the obligee isn't? Fleming said the language in the bill draft can be improved to include language that when an entity honors a lien, a provision would be that when the entity surrenders the property they discharge responsibility to the obligor. This section needs to be rewritten. Fugelsten said the income payer is the insurance company or employer. Fleming said this was to capture the discharge provision; that's why it is in this section. He will make that clear in the next draft. That is why immunity and liability were put in the same section.

Haake said he needs time to look at and study the next bill draft. Schwindt asked what we do now.

Bachmeier asked if there would be a subscriber use fee. Fleming said no, not unless the Legislature would authorize one.

Goetz said section 4 talks about vessels. Larger vessels are registered with the US Coast Guard (e.g., Port of...) not by the state of ND. One would have to check with the US Coast Guard to see if there is a lien on one of these vessels.

Schwindt said a new draft of bill #1 will be discussed at the next meeting.

Devlin said there may be issues with the 'available to the public' language. The public really couldn't use the lien registry unless a person had all the information (e.g., the SSN). He didn't have suggested language but said the current language may be an issue with the Legislature. Goetz said people are already on all kinds of public lists now, for example, different kinds of liens. Fugelsten suggested perhaps changing the language from 'available to the public' to 'SSN search.' Fleming will talk with the Legislative Council about some possible language.

Schwindt asked if bill draft #1 should be re-formatted and address the points raised. The response was yes. It was determined there was no reason to discuss bill draft #1a.

During the February 9, 2010, Task Force meeting the decision was made not to proceed with bill draft #4 relating to reimbursement for withholding child support.

Bill draft #5 relating to electronic remittal of funds withheld for child support:  
Bachmeier made a motion that bill draft #5 be recommended by the Task Force. Oehlke seconded the motion. There was no discussion.

The vote on bill draft #5 was:  
Yes: Bachmeier, Devlin, Fugelsten, Goetz, Haake Oehlke, Representative Weisz, Fleming, Schwindt. Absent: Senator Lee, Rud. Motion carried.

Haake raised a question about bill drafts #5 and #6. He had a note that inserted 'one' (i.e., at any 'one' time). Fleming said that was suggested at one time but Oehlke had pointed out that the desire was to be consistent with the language of the Job Service law.

Bill Draft #6 relating to electronic reporting of new hires (and reporting whether the employer offers health insurance):  
Fugelsten made a motion that bill draft #6 be recommended by the Task Force. Bachmeier seconded the motion. There was no discussion.

The vote on bill draft #6 was:  
Yes: Bachmeier, Devlin, Fugelsten, Goetz, Haake, Senator Lee, Oehlke, Representative Weisz, Fleming, Schwindt. Absent: Rud. Motion carried.

Bill draft #7 relating to reporting of hiring of independent contractors:  
The brackets in section 1 line 12 should be crossed out. Goetz asked if independent contractors have to be reported within 20 days. 1099s aren't done until the end of the year. This would be a definite change of process. Fleming said that if it is felt the independent contractor will be meeting a recurring need, the information needs to be captured sooner.

Fugelsten asked if there should be a delayed start date to give time to get the word out about this requirement. Fleming said the implementation date could depend on the bill to which it was attached. Schwindt asked if there was an amendment. Fugelsten made a motion that the effective date be January 1, 2012. Bachmeier seconded the motion. There was no discussion.

The vote on the amendment to delay the effective date to January 1, 2012 was:  
Yes: Bachmeier, Devlin, Fugelsten, Goetz, Haake, Senator Lee, Oehlke, Fleming, Schwindt. No: Representative Weisz. Absent: Rud. Motion carried.

Senator Lee made a motion that bill draft #7 be recommended by the Task Force. Fugelsten seconded the motion.

Vote on bill draft #7 with effective date of January 1, 2012 was:

Yes: Bachmeier, Devlin, Fugelsten, Senator Lee, Fleming, Schwindt. No: Goetz, Haake, Oehlke, Representative Weisz. Absent: Rud. Motion carried.

#### **5. Review of draft sections of Final Report**

Fleming said he did not have a draft of the Final Report ready for the meeting but will send out drafts by email if that is agreeable to the Task Force members. The plan is to wrap up the Final Report at the next Task Force meeting.

#### **6. Next Meeting – May 11, 2010**

Senator Lee said mileage reimbursement has decreased.