

Testimony
Engrossed House Bill 1111 – Department Of Human Services
Senate Judiciary Committee
Senator Hogue, Chairman
March 4, 2015

Chairman Hogue, members of the Senate Judiciary Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Child Support). I am here to support Engrossed House Bill 1111, which was introduced at the request of the Department.

Section 1

For children who turn 18 years old before graduating from high school, the obligation to pay child support for the child continues until the end of the month in which the child graduates from high school or turns 19, whichever occurs first, as long as the child is still attending high school and living with the person to whom the duty of support is owed.

It has become more common for high school calendars to extend into June rather than conclude at the end of May. In some cases, classes and exams end in May, but the commencement ceremony is not held until June. This has led to the question under current law: when does a child “graduate” from high school for purposes of receiving child support? In 2014, this question was resolved by district courts in North Dakota with different results. Some courts held that the duty of support expires at the end of the month when classes end. Other courts held that the duty of support continues until the end of the month during which the commencement ceremony was held. To be more consistent, the Department is proposing that the law be clarified to provide a clear point in time when a child support obligation expires. Section 1 identifies the

date the commencement ceremony is held as the point when the child graduates.

Sections 2 through 5 and 14

Sections 2 through 5 update current law regarding the periodic review of child support orders. Current law has not been changed much in this area for a long time, and dates back to when federal program requirements in this area were more prescriptive. Today, in recognition of the importance of conducting periodic reviews to make sure that the amount due is appropriate based on the current income of the obligor, current federal regulations focus on outcomes instead of detailed procedures. This allows the state to streamline the review process so it can be quicker and more responsive.

To promote efficiency and reduce delays, Section 2 (and corresponding changes in Sections 3 and 4) proposes that a review not be initiated unless the obligor requesting the review provides the necessary financial information along with the request.

Section 3 clarifies that the notice of review may be sent electronically, since many of our customers today prefer electronic mail. This is consistent with a pending proposed change in federal regulation to promote electronic communication with customers.

Section 4 removes the requirement that Child Support assume the obligor's income has increased by ten percent per year if the obligor has not provided his or her income information. The same provision is currently included in the child support guidelines, and removal of this provision will allow the child support guidelines advisory committee to

consider whether that assumption is successful in promoting cooperation from obligors or if it leads to child support obligations that exceed the obligor's ability to pay.

Section 5 updates current law regarding the notice of the outcome of the review, in recognition of customer preference for receiving notices electronically and in recognition that each parent will receive notice of the court hearing during which Child Support's recommended change in the obligation will be considered.

Similarly, Section 14 repeals the following statute because it is duplicative of the court process and because the Department is proposing the ten-percent presumption be revisited by the guidelines advisory committee.

14-09-08.8. Motion for amendment of child support order - How made – Presumption when obligor's income unknown.

- 1. Upon a determination by the child support agency, made under section 14-09-08.4, that it may or must seek amendment of a child support order, the child support agency may file and serve a motion and supporting documents.*
- 2. The court may determine the motion based upon the files, records, and evidence received in consideration of the motion. If the child support agency certifies that, despite diligent efforts to secure reliable information concerning the obligor's income, the obligor has not produced such information, and if the obligor provides the court with no reliable evidence concerning the obligor's income, it is presumed that the obligor's income has increased at the rate of ten percent per*

year since the child support order was entered or last modified.

Section 6

This section amends alternate versions of state law in the area of medical support and withholding by employers to cover the cost of health insurance for the child. Existing law provides that income withholding for child support has priority over all other legal process, such as garnishments, against the obligor's income. This section would provide a similar priority for withholding for premiums needed to maintain court-ordered health insurance coverage for the child through the employer.

Section 7

The changes proposed in this section make a slight wording change to require Child Support to take steps to establish and enforce medical support that are "appropriate" rather than "necessary," in light of anticipated federal rules that will likely create cases where pursuit of medical support is not appropriate and the case can be closed. One of these situations is where the child is eligible to receive health care through Indian Health Services.

The changes proposed in this section also recognize that medical support may take a form other than health insurance coverage, such as cash medical support.

Section 8

The changes proposed in this section will reduce the amount due from an obligor for purposes of income withholding when the obligor owes arrears but the child now resides with the obligor under a court order. In such a

case, since the obligor is providing for the child's daily needs, the ability to pay on arrears is often reduced.

Section 9

Under the Affordable Care Act, the obligation to obtain health coverage for a child is closely connected to which parent claims the child as a dependent for income tax purposes. Therefore, for purposes of establishing and enforcing a parent's duty to provide health care coverage for the child, it is important to obtain a decision from the court on which parent will be allowed to claim the child as a dependent. This is often something that is already addressed in divorce judgments, so we believe this proposed change will not be difficult to implement.

Sections 10 and 11

These sections propose restoring language that was deleted in 2011 when the lien registry was created for all "titled" personal property. Since that time, we have learned that as a technical matter, vessels are registered rather than titled. The changes in these sections will restore previous law and ensure that vessels can be the subject of a lien for unpaid child support.

Section 12

This section is being proposed to reflect that arrears that are owed before a family starts to receive benefits under the Temporary Assistance for Needy Families program are no longer assigned to the State once the family starts receiving those benefits.

Sections 13 and 15

In September 2014, Congress enacted a new law mandating states enact the 2008 version of the Uniform Interstate Family Support Act (UIFSA). This mandate had been pending in Congress for several years. In anticipation of the mandate, North Dakota adopted UIFSA 2008 in 2009, but with a contingent effective date. Congress requires that UIFSA 2008 be in effect on July 1, 2015, so the contingent effective date needs to be replaced and an emergency clause is needed.

Chairman Hogue and members of the committee, this concludes my testimony on Engrossed House Bill 1111 and I would be glad to answer any questions the committee may have.