

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

February 11, 1993 Hearing Room 357 1:34 p.m. Tapes 19 - 20

MEMBERS PRESENT: Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim Edmunson
Rep. Tom Mason

STAFF PRESENT: Holly Robinson, Legislative Counsel Carole
Souvenir, Legislative Counsel Anne May, Coordinator

MEASURES CONSIDERED: HB 2287 - Consolidates various statutes
relating to attachment of come to satisfy child support

obligations.

HB 2291 - Revises procedure regarding health benefits for children who
are subject of new or modified child support orders.

WITNESSES: John Ellis, Support Enforcement Division Bill
Linden, State Court Administrator Karen Berkowitz, Multnomah County
Legal Aid

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These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in
quotation marks report a speaker's exact words. For complete contents
of the proceedings, please refer to the tapes. [--- Unable To Translate
Graphic ---]

TAPE 19, SIDE A

005 CHAIR BRIAN: Calls the meeting to order at 1:34 p.m.

HB 2287 - WORK SESSION

010 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes bill and
discusses proposed amendments from (EXHIBIT A) and from the Department
of Justice (EXHIBIT B).

054 REP. KEN BAKER: Would like to have each issue discussed
individually and would like to know the status, at this time.

072 ROBINSON: Discusses changes and issues made by the amendments:
>Section five mandates the ability for all child support orders to be
subject to wage or income withholding which is a federal compliance
issue. >Section 13 deals with hardship exemptions. 102 REP. BAKER:
Is automatic wage withholding in federal statute?

103 ROBINSON: Yes. Under the Family Support Act of 1988.

104 REP. BAKER: An obligor cannot take the option of paying directly or through some other mechanism?

109 JOHN ELLIS, SUPPORT ENFORCEMENT DIVISION: There are two kinds of child support cases; those cases which are administered by the state child

support program and those cases which are outside of the state's child support program. >Since 1985, it has been a requirement of all cases, inside the child

support program, to attach wages when the support becomes delinquent.

>Since 1989, it has been a federal requirement, with exceptions, that money is attached to pay child support from everyone's paycheck whether or not they are delinquent. This is called the immediate wage assignment. >Starting in January of 1994, Congress is wanting all child support to

be paid by payroll deduction. However, there are exceptions for individuals who keep their child support payments current. Those exceptions are found under section 12.

133 REP. JIM EDMUNSON: Does this apply to current support obligations only or does that include hardship exceptions for individuals who are behind in payments?

136 ELLIS: Section 13 on page 6 addresses the hardship exceptions for individuals who are in the arrears.

146 REP. EDMUNSON: Would like to have the hardship exceptions explained.

153 ELLIS: There are two types of arrears; one is where money is owed to State to be reimbursed to welfare; the other is to a private party. In

subsection (a) of section 13, the court can impose a hardship exception and order a lower amount to be paid.

190 CHAIR BRIAN: Refers to page six, section 13 from (EXHIBIT A). Would like to know the difference between hardship and severe hardship in

subsections (a) and (b)?

196 ELLIS: It is the same thing, there should be no distinction. Would suggest that the word "severe" in subsection (a) be deleted.

226 CHAIR BRIAN: Would like an example of a hardship situation.

232 ELLIS: According to the law, child support has to be taken from the paycheck unless there is good cause. Good cause is defined to say that

an electronic funds transfer is agreed upon and used and a payment has not been missed in a year.

250 REP. EDMUNSON: Feels more work needs to be done in defining what is considered to be a hardship. Refers to page six, section 13, subsection (b). Do you intend for the Support Enforcement Division to establish

rules to determine cases of hardship?

265 ELLIS: Yes. Would like to have strict instructions from the Legislature on how to go about handling the enforcement of child

support.

293 CHAIR BRIAN: Could the individual, who is required to pay child support to the non-custodial children and has a limited income, also be required to pay for health care when the custodial parent's income is higher?

320 ELLIS: Can define hardship by describing the amount of money which is necessary, per member, in a household. SB 311, a bill proposed by an

advocacy group, says that you have to use, as a standard, food stamp criteria to determine how much money to take from the family and how much money to leave with the family,

352 CHAIR BRIAN: If an individual is eligible for food stamps and has the responsibility to provide support for the non-custodial child who may be in a comfortable situation, how is that type of situation handled?

361 ELLIS: Under current law, it does not matter how well off the family is that the money is owed to or how impoverished the family is that is to

make the payments. We are required, by statute, to collect all of the money which is owed for the month.

386 REP. EDMUNSON: We treat the income of a custodial parent, who may have a large income, as a parent who may be receiving a minimum wage income, is that correct?

409 ELLIS: O.R.S. 25.275 and O.R.S. 25.280, based on federal law, require the Department of Justice to come up with a formula for setting the

amount of child support that people should pay at the time the judgement is entered. When deciding what the non-custodial parent should pay, we

do take into account his other children and the income of the person to whom he owes the money.

437 REP. EDMUNSON: Is this formula used for modifications?

438 ELLIS: Yes. Is trying to establish equitable arrangements to soften some of the enforcement techniques that are used.

TAPE 20, SIDE A

024 REP. EDMUNSON: As we define hardship, might it be a good idea to take into account the relative total family incomes?

026 ELLIS: Absolutely.

048 REP. EDMUNSON: Would like to give the court the jurisdiction to consider an equitable solution if the parties are unable to come to a

decision.

062 ELLIS: Could create an extra provision in section 13 for the court to make a decision for parties who could not come to an agreement.

089 REP. BAKER: Would like to have one system to mandate child support collection.

094 ELLIS: By 1994, Congress requires that all child support orders contain language that subjects each case to wage assignment.

118 ROBINSON: Continues summary of amendments. >Section 16 deals with situations when the withholder is not withholding and what is required. >Section 19 deals with limited liability in instances where the employer knowingly or intentionally fails to withhold child support. >Section 22 and parts of section 12 deal with the attachment of

compensation benefits. >There was concern by the Judicial Department on the impact of the

courts in regards to mailing notices. The wording has been changed to relieve the courts of that responsibility.

184 CHAIR BRIAN: What does section 49 do?

186 ROBINSON: It extends the life of a support enforcement judgement for 30 years.

188 REP. BAKER: Will that be retroactive?

189 ROBINSON: No.

191 ELLIS: Refers to a letter addressed to CHAIR BRIAN dated 2/9/93 (EXHIBIT C) which explains section 49.

251 REP. BAKER: If the obligation continues but there is no judgement, how do you enforce this?

261 ELLIS: By statutory provisions which are created to imply that the obligation is not a judgement.

263 REP. BAKER: Why not extend the judgement until each child is 21 years of age plus three additional years?

266 ELLIS: The issue of asking courts to extend judgements and how that should be done is very controversial.

327 REP. TOM MASON: Thinks that a judgement for 30 years is too long.

350 CHAIR BRIAN: Suggests that section 49 be deleted from HB 2287.

367 REP. BAKER: What if child support judgements were automatically renewed at 10 years for an additional 10 years?

380 BILL LINDEN, STATE COURT ADMINISTRATOR: Wants to avoid creating more problems as to how judgements are handled and recorded.

TAPE 19, SIDE B

003 REP. BAKER: Does not see why a child support order could not be renewed after 10 years by changing O.R.S. 107.105

012 LINDEN: If this change is to take place, certain things would need to happen to the statutes to make sure that the preexisting judgments are

also addressed properly. There are a lot of technical procedural issues that need to be addressed.

090 CHAIR BRIAN: Refers to page six, section 13, line 21. Should the word "shall" or "may" be used after "require"?

096 ELLIS: Does not collect interest now on judgements owed to the State. The interest does exist but it is not being collected. The computer

system does not calculate that information. However, the state is developing a new child support computer system that will include interest.

110 CHAIR BRIAN: The wording will be "shall".

MOTION: CHAIR BRIAN: Moves to amend HB 2287 on page six, section 13, line 21 by deleting "may" and inserting "shall" and by adopting a conceptual amendment, making subsection (c) a new section.

VOTE: CHAIR BRIAN: Hearing no objection the amendments are ADOPTED.

HB 2291 - WORK SESSION

147 ROBINSON: Discusses hand-engrossed amendments from (EXHIBIT D).

187 JOHN ELLIS, SUPPORT ENFORCEMENT DIVISION: Has taken everything out of the bill that would be preempted by federal law. Summarizes changes

under current law: >Page two, line 36. The court can order a parent to provide health

coverage for a child however, it is up to the parent to decide what company is to be used. >Page three, line 10. After the entry of a child support order, the court retains the ability to adjust the amount of child support to recognize the cost of insurance to the parent. >Page three, line 21. An adjustment to adjust the child support for medical insurance only, does not constitute a two-year adjustment under the two-year section. >Page three, line 25. Under current law, health insurance is available to the custodial parent if that parent can be covered at no additional cost.

373 CHAIR BRIAN: Does line 25 refer to self-insurers?

379 REP. EDMUNSON: Self-insurers only. Any health plan provided as an employee welfare plan, and as a benefit of employment, would fall under E.R.I.S.A and would be exempt from this.

394 CHAIR BRIAN: How about the issue of the obligee already having insurance or having access?

397 ELLIS: Refers to page two, line 43. An obligee can chose to provide coverage but if the obligee chooses not to, the obligor can be ordered

to provide health coverage. This will change the amount of child support to reflect who has insurance.

432 CHAIR BRIAN: What if there is no cost to providing health insurance?

434 ELLIS: Then no one would pay for it. TAPE 20, SIDE B

001 REP. MASON: Is uncomfortable with allowing payments for health care outside of the designated child support amount.

013 ELLIS: Trying to come up with a fair and equitable plan for children to be covered with health insurance. This is a problem because people do

not have enough money to pay adequate child support.

044 KAREN BERKOWITZ, MULTNOMAH COUNTY LEGAL AID: One of the concerns has been that the allocated amount for child support which is to include

medical and dental expenses is not enough.

052 REP. MASON: Does not make sense to guarantee health care to children in divorced families when it is not being guaranteed to children in

non-divorced families.

082 CHAIR BRIAN: Closes work session and adjourns meeting.

Submitted by:

Reviewed by:

Karen Edwards
Coordinator

Anne May Assistant

EXHIBIT LOG:

A - Amendments to HB 2287 - Staff - 46 pages B - Amendments to HB 2287
- John Ellis - 9 pages C - Testimony on HB 2287 - John Ellis - 2 pages
D - Amendments to HB 2291 - Staff - 6 pages