

HB392 specifically provides that a CSED attorney "employed to provide Title IV D services represent only the department's interests and that no attorney-client relationship exists between the attorney and another party".

Significant Issues

The bill:

- ❑ Reduces the Interest Rate for Delinquent Child Support to 4%;
- ❑ Changes the Statute of Limitations for Paternity (no later than 12 years after the birth of a child);
- ❑ Changes the Statute of Limitations for Past Child Support Claims (12 years);
- ❑ Establishes an Arrears Management Program to provide amnesty for child support arrears.

Interest accrues on delinquent child support at a rate in effect when the support payment becomes due and shall accrue from the date the support is delinquent until the date the support is paid or consolidated in a judgment. The current interest rate is 8 ³/₄ %.

The manner in which interest rates are calculated creates the following issues:

- ❑ Creates a disincentive for any payment of child support payments because the total amount (interest plus principal) is difficult to pay-off.
- ❑ The amount of interest owed usually is the limiting factor in license revocation proceedings for return of the license.
- ❑ Calculation of interest (including various interest rates) by CSED is an expensive and burdensome process in conjunction with the judicial proceedings associated with child support.

HSD is given the power to forgive the interest payment if the department believes it is likely to result in the collection of more child support. HSD is also authorized to return suspended licenses to promote increased collection of delinquent support. The proposed changes will give HSD tools to work with parents that owe child support to collect arrears or work-out payment options for non-custodial parents.

In summary, the interest rate reduction, Arrears Management Program and statute of limitations change are all-powerful tools for the CSED to use in negotiating child support cases.

FISCAL IMPLICATIONS

The amount of interest accrued during State Fiscal Year 2003 was:

- \$25.6 million (\$25,647,069.97 on arrears due to the Custodial Parent), and
- \$7.4 million (\$7,365,642.04 on arrears due to State/Federal Government for Title IV-A Recovery)
- Totaling: \$33 million (\$33,012,712.01.)

The amount of interest collected and distributed during State Fiscal Year 2003 was:

- \$820,299.52 (to the Custodial Parent), and
- 11 cents (to State/Federal Government for IV-A Recovery)
- Totaling: \$820,299.63.

With both the reduced interest rates and an Arrears Management program, it is anticipated that New Mexico can increase its collections of child support interest to 4% of all cases or \$250 thousand in additional revenue and will receive about 1,800 requests for the amnesty program resulting in \$350 thousand in additional collections for custodial parents. These additional revenues and collections will be “passed through” to the non-custodial parent.

Additional costs are as follows:

- \$2,200 programming changes
- \$23,200 public campaign to advertise changes

The Department should report through the interim committee process the changes in collections in the upcoming year in order to evaluate the effect of these changes.

ADMINISTRATIVE IMPLICATIONS

There will be some initial costs associated with the programming changes to the CSED computer system (the Child Support Enforcement System-CSES). These are considered to be very negligible compared to the savings in time for workers in calculating interest.

If HB392 becomes law, the CSED will have to develop some formal internal procedures for how field staff will implement it. The cost of this will be minimal.

Minimal impact to the court system will be felt by the proposed changes since the action will mainly be done by CSED administratively. New orders would simply follow the new 4% interest rate. The Administrative Office of the Courts can assist in any training issues that would occur for District Courts in their regular training schedule.

CONFLICT

A provision of HB 392 (p. 5, lines 12-13) may conflict with the Parental Responsibility Act, §§ 40-5A-1 through 40-5A-13.

TECHNICAL ISSUES

AG listed the following concerns with HB392:

- A provision of HB 392 (p. 5, lines 12-13) may conflict with the Parental Responsibility Act, §§ 40-5A-1 through 40-5A-13.
- An amnesty program for delinquent child support may implicate Art. IV, Sections 32 and 34 of the New Mexico Constitution.
- Federal law requires as a condition of receiving federal funding that states provide assistance in obtaining support for all children for whom support is requested. A child support enforcement action may be brought on behalf of a family that receives assistance

under the Public Assistance Act or a non-assistance family. When the state brings the action to enforce child support on behalf of a family that receives public assistance, the state is seeking, inter alia, reimbursement for the public assistance benefits paid out to support the child in the absence of child support. Section 27-2-27 (A)(3).

- A child support enforcement action may be brought on behalf of a non-aid family. Section 27-2-17 (A)(4). "In actuality, the Department's role has been that of the [child's] attorney." *State ex rel. Salazar v. Roybal*, 1998-NMCA-93, 125 N.M. 471. If the Department does not represent the real party in interest in this circumstance, the Department may not have standing to initiate the action or to intervene in an action. Moreover, HB 392, § 1 may impact the creation of the attorney-client relationship, which is a fiduciary relationship governed by Rules of Professional Conduct adopted by the Supreme Court and evidentiary privileges established by the Supreme Court. Also, this raises the question whether the state is operating a child support enforcement program that meets the federal requirements.

BD/yr:dm