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## FISCAL IMPACT REPORT

SPONSOR Lujan, B DATE TYPED 02/09/04 HB 470

SHORT TITLE Child Support Enforcement Changes SB \_\_\_\_\_

ANALYST Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 392 and SB 48.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Human Service Department (HSD)  
Office of Attorney General (OAG)  
Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Bill 470 is the "Enforcement Support Act" and proposes to change the New Mexico laws dealing with the interest on child support arrears and the statute of limitations relating to these arrears.

#### 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 <sup>3</sup>/<sub>4</sub> %.

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 Child Support Enforcement Division (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 it 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.

## **FISCAL IMPLICATIONS**

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

- (\$25.6 million on arrears due to the Custodial Parent), and
- (\$7.4 million on arrears due to State/Federal Government for Title IV-A Recovery)
- Totaling: (\$33 million).

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.

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.

## **TECHNICAL ISSUES**

HSD states that the language for the statute of limitations in HB470 improperly removes the provision in Section 40-11-23 B NMSA 1978, which is the default method of establishing a judgment complying with the statute of limitations. Additionally, the term "good cause" is a relatively easy threshold to achieve and is not as restrictive as the HSD proposed language: "The court shall order child support retroactive to the date of the child's birth, but not to exceed more

than 12 years, unless there is a substantial showing that paternity could not have been established within 12 years from the birth of the child.”

Observations of the AG are:

- ❑ The provision of HB 470 (p. 3, lines 3-4) that provides that the department has the ability to authorize the return of suspended licenses may conflict with the Parental Responsibility Act, § 40-5A-6.
- ❑ It is not clear whether changes to §§ 40-5A-4, 40-5A-5, and 40-5A-6 (p. 3, lines 13-15 and 17-19; p. 4, lines 14-16 and 18-20; and p.5, lines 13-14) are intended to be style changes or substantive changes. "Compliance" as defined under § 40-5A-3 (D) expressly applies only to an "obligor", who is defined under § 40-5A-3 (I) to mean a "person who has been ordered to pay ... support pursuant to a judgment and order for support." The effect of the proposed changes referenced above means that the substantive provisions of the Parental Responsibility Act relating to license applications and renewals do not apply unless the person has been ordered to pay support pursuant to a judgment and order. For example, an applicant or licensee who is under a contempt order for failure to respond to a subpoena in a paternity action or who is under a warrant for failure to answer the contempt order in a paternity action would not be subject to the substantive provisions of the Act unless the person is out of compliance with a judgment and order for support. To clarify the intent of the proposed changes, replace the nouns "person" (p. 3, line 11) and "licensee" (p. 4, line 12) to "obligor."
- ❑ The proposed amendment to the §40-4-7.3 (F) (p. 3, lines 5-7) refers to implementation of the Support Enforcement Act. It may be better to locate this provision under the Support Enforcement Act, §§ 40-4A-1 through 40-4A-19.
- ❑ References to § 4-11-23 in Sections 9 and 10 of HB 470 are confusing. If the intent is to create a statute of limitations on actions for recovery of past child support claims, consider a change to § 40-11-14 and a new provision under the Support Enforcement Act. If the intent is to limit the liability for past child support to no more than 12 years, consider revised language.

## AMENDMENTS

HSD recommends that the following language be added to HB470:

NEW SECTION 27-2-27 NMSA 1978 RELATING TO THE SINGLE STATE AGENCY ;  
POWERS AND DUTIES – CHANGING THE ATTORNEY-CLIENT ROLES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

NEW SECTION 27-2-27 E. THROUGH I, NMSA 1978:

27-2-27. Single state agency; powers and duties.

The department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV D of the federal act with the following duties and powers:

A. establish the paternity of a child in the case of the child born out of wedlock with respect to whom an assignment of support rights has been executed in favor of the department;

B. establish an order of support for children receiving aid to families with dependent

children and, at the option of the department, for the spouse or former spouse with whom such children are living, but only if a support obligation has been established with respect to such spouse or former spouse, for whom no order of support presently exists and seek modification, based upon the noncustodial parent's ability to pay, of existing orders in which the support order is inadequate to properly care for the child and the spouse or former spouse with whom the child is living;

C. enforce as the real party in interest any existing order for the support of children who are receiving aid to families with dependent children or of the spouse or former spouse with whom such children are living; and

D. provide services to non-aid families with dependent children in the establishment and enforcement of paternity and child support obligations, including locating the absent parent. For these services, the department is authorized to establish and collect fees, costs and charges permitted or required by federal law or by regulations adopted pursuant to that federal law.

E. In all cases handled by the department pursuant to the provisions of this section, the child support enforcement division of the department and any attorney employed by the division shall represent the department , to the exclusion of any other party, in establishing, modifying and enforcing support obligations. An attorney employed to provide Title IV-D services represents the interests of the state and not the interests of any other party. The provision of services by an attorney under this chapter does not create an attorney-client relationship between the attorney and any other party. The department shall, at the time an application for child support services is made, inform the applicant that neither the Title IV-D agency nor any attorney who provides services under this chapter is the applicant's attorney and that the attorney providing services under this chapter does not provide legal representation to the applicant. The department shall not prosecute or defend any ancillary matters such as custody, visitation or property division raised in such proceedings. The department may petition for modification of child support or medical support for children.

F. The department may initiate an action or may intervene in an action involving child support. Intervention by the department in an existing action is by unconditional right and is accomplished by the department filing an entry of appearance.

G. An attorney employed by the department or as otherwise provided by this chapter may not be appointed or act as a guardian ad litem for a child or another party.

H. The provision of services by the department under this chapter or Part D of Title IV of the federal Social Security Act ( 42 U.S.C. Section 651, et seq.) does not authorize service on the department of any legal notice, document or pleading that is required to be served on any other party other than the agency.

I. A court shall not disqualify the department in a legal action filed under this chapter or Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651, et seq.) on the basis that the agency has previously provided services to a party whose interests may now be adverse to the relief requested.

AMENDING SECTION 40-11-15 (C) NMSA 1978 (BEING LAWS 1974, CHAPTER 40, ARTICLE 11, SECTION 15(C), AS AMENDED) RELATING TO JUDGMENT OR ORDER

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

AMENDED Section 15 (C) NMSA 1978 (being Laws 1974, Chapter 40, Article 11, Section 15(C)1,asamended)

C. The judgment or order may contain any other provision directed against or on behalf of the appropriate party to the proceeding concerning the duty of past and future support, the custody and guardianship of the child, visitation with the child, the furnishing of bond or other security for the payment of the judgment or any other matter within the jurisdiction of the court. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy, birth and confinement. The court shall order child support retroactive to the date of the child's birth, but not to exceed more than 12 years, unless there is a substantial showing that paternity could not have been established within 12 years from the birth of the child, pursuant to the provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978; provided that, in deciding whether or how long to order retroactive support, the court shall consider:

- (1) whether the alleged or presumed father has absconded or could not be located; and
- (2) whether equitable defenses are applicable.

NEW SECTION 40-4A-19 NMSA 1978 RELATING CHILD SUPPORT ENFORCEMENT – ARREARS MANAGEMENT PROGRAM

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

NEW SECTION 40-4A-20 NMSA 1978:

The human services department is authorized to conduct an “arrears management program” (amnesty program) for child support arrears, pursuant to procedures adopted by the department, starting on or after December 15, 2004. The arrears management program shall not exceed more than twelve months and shall only be authorized thereafter every two years. The department shall before renewing the next arrears management program, provide to the Welfare Reform Oversight Committee, a report on the previous program.

BD/dm