



**House  
Legislative  
Analysis  
Section**

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**RETROACTIVE SUPPORT ORDERS**

**Senate Bill 318** with committee amendment  
Sponsor: Sen. Rudy J. Nichols

**Senate Bill 319** as passed by the Senate  
Sponsor: Sen. Connie Binsfeld

**Senate Bill 320** as passed by the Senate  
Sponsor: Sen. Lana Pollack

Senate Committee: Judiciary  
House Committee: Judiciary

First Analysis (6-30-87)

S.B. 318-320 (6-30-87)

**THE APPARENT PROBLEM:**

Last October, Congress passed a law to mandate that all states prohibit their courts from retroactively modifying child support arrearages. States that do not comply by April 1, 1987, risk losing their federal Aid to Families with Dependent Children (AFDC) funding. This mandate continues earlier federal support enforcement reform that required states to pass laws instituting automatic income withholding, tax refund interception, and expedited judicial proceedings, which Michigan did through the enactment of Public Acts 208-216 of 1986. Specifically, Congress now is requiring that a court-ordered support payment be 1) a judgment by operation of law, with the ability to be enforced as a judgment; 2) entitled to full faith and credit in any state; and 3) not subject to retroactive modification, except from the time a petition for modification is filed and notice given to the other party. In order to avoid jeopardizing Michigan's AFDC funding, it has been recommended that these provisions be enacted.

**THE CONTENT OF THE BILL:**

Senate Bill 318 would amend the Support and Visitation Enforcement Act to provide that a support payment due under a support order could not be subject to retroactive modification on and after the date it was due. When there was a pending petition for modification, however, the payment could be modified retroactively, but only from the date that notice of the petition was given to the payer or recipient of support.

MCL 552.601 et al.

Senate Bill 319 would amend the Uniform Foreign Money-Judgments Recognition Act, which prescribes conditions for the recognition of foreign money judgments in Michigan. The bill would change the definition of "foreign judgment" to include, rather than exclude as it currently does, judgments for support "in matrimonial or family matters".

MCL 691.1151

Senate Bill 320 would amend the Revised Judicature Act to specify that the courts would have the power to punish by fine or imprisonment, or both, parties to actions, attorneys, counselors, and all other persons for disobeying or refusing to comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance.

MCL 600.1701

A more detailed description of Senate Bill 318 follows:

The bill would apply to support payments due prior to the effective date of the bill, except that a payer or payee would have 60 days after notification by the Friend of the Court of the change in the law to file a petition for retroactive modification of his or her support order. Not more than 90 days after the effective date of the bill, the Office of the Friend of the Court in each judicial district would be required to send notice to each payer and payee of the changes in the law made by the bill. The payer or payee would have to be informed that he or she had 60 days from the date the notice was mailed to petition the court for modification of support payments that were due prior to the effective date of the bill. The Friend of the Court also would be required to publish such a notice in at least one newspaper having general circulation in each judicial circuit or county. If a payer or payee filed a petition after the 60-day period, the court could permit a hearing on the petition only if the petitioner showed that he or she did not receive the required notice and that exigent circumstances prevented him or her from filing.

The bill specifies that it would not prohibit a court approved agreement between the parties to modify a support order retroactively, nor would it limit other enforcement remedies available. The bill would not apply to an ex parte interim support order that was entered pursuant to Michigan Court Rule 3.206.

The bill also provides that every support order issued by a court in this state would be required to contain the following statement: "Except as otherwise provided in Section 3 of the Support and Visitation Enforcement Act, Act No. 295 of the Public Acts of 1982, being Section 552.603 of the Michigan Compiled Laws, a support payment due under a support order is, on and after the date it is due, a judgment by operation of law with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification."

The bill would also require the Friend of the Court to inform a payer or payee who contacted the office and indicated he or she had experienced changed financial conditions that a form petition was available for use in petitioning for modification of a support order without the assistance of legal counsel. The office would have to provide one, along with instructions on its use, immediately upon request and provide assistance if asked. Within seven days after receiving a form petition, the office would have to file it with the court, schedule a hearing on the petition, and

serve a copy of the petition and a notice of hearing on both parties.

### **HOUSE COMMITTEE ACTION:**

The House Judiciary Committee amended Senate Bill 318 to require the Friend of the Court to inform a payer or payee who contacted the office and indicated he or she had experienced changed financial conditions that a form petition was available for use in petitioning for modification of a support order without the assistance of legal counsel. The office would have to provide one, along with instructions on its use, immediately upon request and provide assistance if asked. Within seven days after receiving a form petition, the office would have to file it with the court, schedule a hearing on the petition, and serve a copy of the petition and a notice of hearing on both parties.

### **FISCAL IMPLICATIONS:**

The following information has been provided by the Senate Fiscal Agency:

The federal government requires the state to implement this legislation to avoid reductions in or withholding of federal funds.

If Senate Bill 318 does not pass, the state could receive reduced federal reimbursement for AFDC (Title 4A). The reduction in federal reimbursement is estimated to be between \$1.75 million and \$3.5 million for each quarter the state is not in compliance with federal regulations.

The federal government could also withhold federal reimbursement for the State Child Support Program (Title 4D) until the state complies with federal regulations. It is estimated up to \$10.7 million each quarter could be withheld until the state complies with federal regulation. Once the state complied, the money withheld would presumably be paid to the state.

While the penalties outlined above are provided in federal statute, these penalties have, to date, never been used against any state.

Senate Bill 318 would, at the same time, result in increased costs to state and local government.

The state pays for the operations of the Third Circuit Friend of the Court (Wayne County). The current caseload for that Friend of the Court Office is approximately 350,000. The notice requirements in the bill would result in a mailing cost of \$161,000 (using post cards at bulk mailing rates). The federal government would reimburse the state approximately 48 percent of this cost through the Cooperative Reimbursement Program.

Local units of government would incur mailing costs based on their current active caseloads. Local units of government would receive approximately 53 percent of the cost from the federal government through the Cooperative Reimbursement Program.

Senate Bills 319 and 320 would have no fiscal impact on state or local government.

### **ARGUMENTS:**

#### **For:**

Passage of these bills not only would protect Michigan's AFDC funding, but also would strengthen the enforcement of child support orders in this state. Even without the federal mandate, several policy reasons exist for prohibiting retroactive modification of support orders. In the first place, the purpose of support is to protect a child's welfare.

The custodial parent, who actually provides for the child's welfare, should be able to rely on receiving the court-ordered amount until the noncustodial parent files a petition for a reduction. The noncustodial parent also should be able to expect that payments already made in compliance with a court order have satisfied his or her past financial responsibility and cannot be retroactively increased. Although it currently is the practice in Michigan to allow a retroactive modification only from the date a complaint is filed, Senate Bill 318 would codify this policy, while allowing for flexibility for the parties to agree otherwise and providing for interim support orders.

Secondly, allowing a retroactive reduction or elimination of past-due support simply encourages payers to let arrearages grow in the hope that the court will reduce the arrearage in exchange for cooperation. This legislation would encourage prompt legal action when a payer lost his or her job or suffered some other significant income reduction.

Finally, the bills would promote interstate enforcement of support orders. Typically, a judge in another state refuses to enforce an arrearage that accrued in Michigan before the payer could be located in the other state. Making support orders judgments, however, and making their violation punishable by contempt, would entitle the arrearages to full faith and credit in other states and would be enforceable under our interstate enforcement law.

#### **For:**

Child support enforcement has been a failure throughout the country. The latest Census Bureau statistics show that the majority of custodial parents are raising children with little or no financial assistance from noncustodial parents, who often simply ignore a legal support obligation. Poverty among American children has increased dramatically in the last several years, usually because of a divorce. Although child support is a debt, children and custodial parents are treated as second class citizens who are not even entitled to the protections offered creditors under consumer law. If this situation is to be remedied, it is essential that the obligation to pay child support be treated with at least the same amount of seriousness as any other financial obligation.

#### **For:**

It is reported that a study of child support enforcement conducted in 28 of Michigan's largest counties and Friend of the Court offices found that paying child support appears to be habitual behavior: once the practice of paying or not paying is established, it persists. Eliminating retroactive modification should reinforce the habit of responsible payments.

#### **Against:**

Some people object to the state's being coerced by the federal government into accepting uncritically significant changes in state law. Others have questioned the constitutionality of the legislature's making a support payment "a judgment by operation of law" on the grounds, generally, that judgments are the responsibility of the courts.

### **POSITIONS:**

Representatives from the Department of Social Services and the State Court Administrative Office testified in favor of the bills before the House Judiciary Committee. (6-29-87)