

CHILD SUPPORT/LICENSE ACTIONS

House Bill 4135 with committee amendments

Sponsor: Rep. Paul Baade

House Bill 4136 with committee amendments

Sponsor: Rep. Michael J. Bennane

House Bill 4137 (Substitute H-1)

Sponsor: Rep. Karen Willard

House Bill 4138 (Substitute H-3)

Sponsor: Rep. Sharon Gire

First Analysis (3-16-93)

Committee: Human Services & Children

THE APPARENT PROBLEM:

A continuing problem for the state and society is the difficulty in getting noncustodial parents to pay child support. Without support payments, many children end up in poverty and on government assistance. Michigan law provides a number of mechanisms to enforce payment of support, such as the use of criminal contempt of court and the intercepting of tax refunds, but one of the most effective of these remedies, the use of income withholding for support payments, is of little benefit when it comes to the self-employed. With support arrearages estimated at well over \$2 billion, and it is clear to many that additional means must be found to enforce support orders, especially with regard to self-employed payers. To encourage the payment of support, it has been proposed that suspension of an occupational or driver's license be allowed for failure to pay support.

THE CONTENT OF THE BILLS:

Together with Senate Bill 173 (Substitute S-1), the bills would provide for the suspension of a professional, occupational, or driver's license for failure to pay a support arrearage. ("Support" often means child support, but can include alimony.) The friend of the court could, but would not have to, seek a license sanction if income withholding was not available or had proved unsuccessful. The payer would have an opportunity for a hearing and to agree to a payment schedule (assuming the court

decided the payer had the resources) before the court ordered the licensing agency to suspend the license. The court could condition a license on compliance with a payment schedule. A suspension order would be rescinded immediately (and the appropriate agency notified within two business days) after a payer agreed to a payment schedule for the arrearage. None of the bills could take effect unless all (including Senate Bill 173) were enacted. The package would take effect 180 days after enactment. A more detailed explanation follows.

House Bill 4138 would amend the Support and Visitation Enforcement Act (MCL 552.602 et al.) to authorize the friend of the court to institute a license suspension action for failure to pay support, and to authorize the court to issue a suspension order. The friend of the court would initiate the action only if there was a support arrearage of at least one month or \$1,000, and an order of income withholding either was not available or had not been successful. The friend of the court would notify the payer that he or she could demand a hearing and that he or she could ask to have the amount of support required changed if his or her circumstances had changed.

The court would order a license to be suspended if the payer had failed to respond to the notice within 14 days (and had continued to fail to pay the

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arrears for another 7 days beyond that), or if, following a hearing, the court determined that the payer was able to pay at least part of the support arrearages and had failed to do so. The suspension order would provide for a license to be suspended 28 days after the order was issued. The friend of the court would notify the appropriate agency of the suspension order.

If the payer agreed to a payment schedule for the arrearage, the court would rescind the suspension order, effective immediately. The friend of the court would notify the appropriate agency within two business days.

Commencing with new support cases, payers would have to give the friend of the court information on any occupational/professional or driver's licenses held. Also, a payer would have to immediately notify the friend of the court of any change in license status.

A source of income could not use a suspension under the bill as a basis for refusing to employ or to discharge, discipline or penalize a payer unless the suspended license was legally required for the payer's performance of the job. However, the bill would not prevent such action against a payer if the license was a necessary predicate to the employment.

House Bill 4137 would amend the Michigan Vehicle Code (MCL 552.602) to require the secretary of state, upon receiving a suspension order issued under House Bill 4138, to notify the license holder that his or her operator's or chauffeur's license would be suspended 28 days later, unless the friend of the court notified the secretary of state that the suspension had been rescinded. After sending the notice, the secretary of state would suspend the license as described in the notice. For a license to be reinstated, the friend of the court would have to rescind the suspension order, and the license holder would have to pay a \$6 license reinstatement fee.

House Bill 4136 would create the Regulated Occupation Support Enforcement Act to require regulatory agencies of the state of Michigan to suspend licenses in accordance with House Bill 4138. The act would apply to certificates, registrations, and licenses issued by a state agency that allow an individual to engage in a regulated occupation or allow an individual to use a specific

title in the practice of an occupation, profession, or vocation.

Within seven business days after receiving a suspension order from the friend of the court, the agency would notify the license holder that it would automatically suspend the license within 28 days, unless the friend of the court notified the agency that the suspension was rescinded. Unless notified that the suspension order had been rescinded, the agency would have to suspend the license 28 days after sending the notice to the license holder.

The agency would have to reinstate a license if the suspension order was rescinded under House Bill 4138; the effective date of the reinstatement would be the date the order was rescinded. The agency would have to notify the licensee of the reinstatement within seven business days after learning that the suspension order had been rescinded.

House Bill 4135 would amend the Administrative Procedures Act (MCL 24.292) to limit the application of a provision that requires regulatory agencies to give licensees facing license sanctions the opportunity to show compliance with all lawful requirements for the license. The bill would exempt suspensions under House Bill 4136 from the act.

A proposed substitute for Senate Bill 173 (currently in the Senate Committee on Family Law, Criminal Law, and Corrections) would amend the contempt provisions of the Support and Visitation Enforcement Act to allow the court to condition a license on compliance with a payment schedule, and, if the payer failed to comply, proceed to order a license suspension.

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

When a person fails to pay court-ordered family support, children can end up in poverty, with the state assuming the burden of their support. While various measures, such as court-ordered income withholding or the threat of jail, can be used to get a reluctant payer to meet his or her obligations, they are all too frequently inadequate, especially against payers who do not receive a regular

paycheck. The prospect of license suspension thus should be especially effective against what may be the most vexing population of delinquent payers: those who have the ability to pay, but who are self-employed and thus can avoid court-ordered income withholding. It is to such payers that the bills would apply, and many can no doubt be found among the 6.4 million licensed drivers and the 1.3 million holders of occupational or professional licenses in the state. With that potential breadth comes potential effectiveness: it is hoped that rather than lose a license, many payers will pay overdue support or agree to payment arrangements.

Against:

The bills propose license sanctions for matters that have nothing to do with professional ability or driving record. Worse, by eliminating a person's means to practice his or her profession or occupation, the bills would eliminate a person's ability to pay support; the delinquent payer might be punished, but so would the support recipient. And, license suspension could harm other innocent parties: for example, the unanticipated loss of a practicing physician could adversely affect the availability of health care in a rural area or create staffing problems in a hospital. The proposal to extend the suspension legislation to drivers' licenses is especially troublesome: it is likely to be particularly ineffective, as many people continue to drive on a suspended license, and it carries with it the potential for an unintended escalation of offenses, as driving without a license is a misdemeanor, a criminal offense. Moreover, the loss of a driver's license could mean the loss of the ability to visit one's children. It would be better to seek other avenues of enforcing support orders against the self-employed, such as attaching bank accounts or encouraging licensing boards to act under current standards that require "good moral character" for licensure.

Response:

Placing a lien on a bank account is something the friend of the court can do now, but identifying accounts is a problem, and getting to the funds is even more difficult, given the ease with which the account holder can complicate matters with joint accounts or change banks upon receiving the notice for a hearing on the lien. With regard to using current standards for good moral character, one problem is that not all occupations require "good moral character" as such. Further, if license suspensions are to be done, it makes more sense to do them as proposed by the bills, and have the

decision made by the court system, which will be much better informed on the circumstances of the case and the seriousness of the problem than a licensing board. Finally, with regard to concerns that suspensions could eliminate payers' ability to pay, it should be noted that friends of the court would not be required to seek license suspensions, but rather would be authorized to do so if warranted by the facts of the case; courts, in turn, would order suspensions only if there was an ability to pay. There is no desire to eliminate a person's ability to pay, but rather a hope that the prospect of losing a license will prompt an otherwise recalcitrant payer to make payments.

Against:

The bills are inherently unfair to payers of support. They assume that friend of the court accounts are correct, when in actuality errors are common, at least in larger jurisdictions; that payers for whom income withholding is ineffective are people who can pay, when in fact many are under- or unemployed; and, that hardship cases will be recognized as such and excused by either the friend of the court or the court, when in fact many payers are unable to find adequate representation or to represent themselves effectively, and thus end up with no accommodation from the system. The bills would make it all too likely that a person with small means and poor communication skills will unfairly lose a license.

Against:

The bills could mean unequal treatment for workers in the construction trades. One worker (say a plumber) who needed a license to ply his or her trade would be at risk of losing his or her livelihood, while another worker (say a carpenter) who did not have to have a license would be at risk of losing only a driver's license. If license suspensions are to be used to get people to pay back support, it would be better to first employ the suspension with almost universal application--that is, the driver's license--and then go after the occupational license as a last resort.

Against:

House Bill 4137 would impose a driver's license reinstatement fee of \$6, well below department costs, which are probably closer to \$10 per license. Multiply the potential per-license loss by the estimated 300,000 delinquent payers of support, and the potential costs become significant indeed, and could outstrip any increases in AFDC

reimbursements received by the Department of Social Services as a result of the legislation.

Response:

The core concern of the legislation is to ensure that families get their support payments, not to mete out punishment through license suspensions or to increase AFDC-related collections. Besides, \$6 is what the secretary of state retains of the \$25 reinstatement fee that applies under other circumstances.

Against:

Earlier versions of the legislation proposed to amend the various licensing acts to provide for license suspensions, rather than create one new public act to accomplish the purpose. As the current approach addresses the duties of the boards and agencies established under those licensing laws, the question arises whether the bills might attempt an unconstitutional "amendment by reference" of the various occupational acts.

Response:

The bills would not attempt an unconstitutional amendment by reference; if anything, they would constitute a permissible "amendment by implication" in which there may be tangential effects on other laws, but they are not directly affected. The bills would not alter the powers of the various boards and agencies; rather, they would direct those powers in a manner that was consistent with the existing acts. In addition, to amend each licensing act would be unnecessarily complicated; there are dozens of licensing laws, many of them obscure. To try to amend each one would be to risk overlooking some.

Against:

The bills overlook a large segment of the professional population: attorneys. Because attorneys are not licensed or certified by a state agency, they would not be subject to the license suspensions contemplated by the bills.

Response:

The bills arguably would overreach themselves if they attempted to include attorneys. Matters of attorney licensure and attorney conduct come under the authority of the state bar, which in turn falls within the purview of the supreme court, not the legislature.

POSITIONS:

The Department of Social Services supports the bills. (3-10-93)

The Friend of the Court Association of Michigan supports the concept of the bills, but has not yet reviewed the substitutes. (3-10-93)

The Michigan Family Support Council supports the concept of the bills, but has not yet reviewed the substitutes. (3-10-93)

The Michigan Plumbing and Mechanical Contractors Association does not oppose the concept of the bills, but has concerns about their potential for unequal application within the construction industry. (3-15-93)

The Department of State has no position on the bills. (3-10-93)

Fathers for Equal Rights opposes the bills. (3-15-93)