

## INTEREST ON SUPPORT PAYMENTS

House Bill 4276 (Substitute H-2)  
First Analysis (6-22-93)

Sponsor: Rep. Willis Bullard, Jr.  
Committee: Judiciary

### ***THE APPARENT PROBLEM:***

Section 3 of the Support and Visitation Enforcement Act says that a support order that is part of a judgment or that is an order in a domestic relations matter is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment in this state. In Langford v. Langford (196 Mich App 297), decided October 19, 1992, the court of appeals said that "it is clear that the adoption of section 3 means that the arrearage on a support order is a judgment from the time that amount falls due, and that interest is to run on this amount as it would with any other civil judgment." The court held that effective July 6, 1987 (the effective date of the language in question), statutory interest must be added to support arrearage orders entered after that date. The court said that it was not a matter on which a trial court's discretion could be brought to bear.

The Revised Judicature Act sets forth a relatively complex formula for statutory interest on money judgments in civil actions not involving a written instrument. That interest rate is set every six months, and is equal to one percent plus the average interest rate paid at auctions of five-year U.S. Treasury notes during six months preceding July 1, and January 1, compounded annually. At present the interest rate, including the one-percent add-on, is 6.797 percent.

Many, while agreeing with the court that interest should be charged on overdue support payments, believe that matters should not be left to stand as they are. For one thing, to use the existing formula for the calculation of interest strikes many as unnecessarily complicated. Further, the court did not specify who is to add and collect the required interest, and opinions differ over whether such duties may be assumed to lie with the friend of the court or whether the collection of interest requires separate court action initiated by each support recipient. There is no explicit statutory mechanism

for enforcing or collecting interest on support orders.

Legislation has been proposed to clarify matters, and place the gist of Langford into statute.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Support and Visitation Enforcement Act to require interest at an annual rate of 10 percent to be added January 1 and July 1 to support payments that are past due as of those dates. Interest would not be added to support that was ordered under the Paternity Act for a period of time before the date of the support order. Each support order would carry a notice warning that interest would be added to each support payment not paid on its due date.

MCL 552.603

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that an analysis of the bill is in process. (6-21-93)

### ***ARGUMENTS:***

#### ***For:***

In requiring interest to be added to overdue support payments, the bill would codify the decision of the court of appeals in Langford. More to the point, the addition of interest will compensate support recipients who have not been receiving the money due them on a regular basis, and it will provide an incentive to payers to pay promptly.

#### ***Against:***

The bill would do better to make the ordering of interest at the discretion of the court, rather than automatic. That way, the law would accommodate individual extenuating circumstances while continuing to employ the threat of interest charges

as a lever with which to pry loose support payments. To require interest on all back support would be to create situations where payers who could not pay faced ever-growing arrearages, and where friends of the court faced additional administrative costs in calculating and attempting to collect uncollectible interest payments.

***Against:***

The bill presents a number of difficulties of implementation. Interest is to be charged on past due support payments, but it is not clear whether "past due support" is to include overdue support plus previously-charged interest, or only back support payments. Further, like Langford, the bill is not explicit on who is to collect interest or how it is to be distributed; presumably, interest would be added and collected by the friend of the court, but if so, companion amendments to the Friend of the Court Act would be advisable. Neither does the bill specify how interest payments are to be treated in the distribution of amounts collected. Federal law requires that payments in Title IV-D cases (generally, where support is signed over to the state for reimbursement of Aid to Families with Dependent Children) is to be applied first to current support and then to arrearages; presumably satisfaction of interest charges would fall last, but it is not clear who would get those interest payments, the government or the recipient of support. Finally, interest is taxable income as far as the Internal Revenue Service is concerned; interest payments could have the undesirable effect of increasing tax burdens on recipients. Further, if interest is collected and paid, who would have to complete and send IRS Form 1099, the federally-required statement of interest payments?

***Against:***

If interest charges are to be mandatory rather than discretionary, the rate of interest charged should be lower, so as to prevent undue hardship.

***Response:***

The ten percent proposed by the bill is not out of line with what other states are charging. To employ a lower rate would be to provide less of an incentive to pay on time.

***POSITIONS:***

The Department of Social Services supports the concept of the bill. (6-16-93)

The Family Support Council supports the concept of providing for payment of interest on support payments. (6-21-93)

The Friend of the Court Association supports the concept of providing for payment of interest on support payments. (6-21-93)

The National Organization for Women, Michigan Conference supports the concept of the bill, but has no formal position at this time. (6-18-93)