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## CHILD SUPPORT/LAWYER LICs.

House Bill 4803 with committee  
amendment  
First Analysis (6-23-93)

Sponsor: Rep. Jack Horton  
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, House Bills 4135 through 4138, together with Senate Bill 173, propose to allow suspension of an occupational or driver's license for failure to pay support. Those bills however, would not apply to attorneys' licenses. Legislation has been proposed to extend the concept to attorneys.

### *THE CONTENT OF THE BILL:*

The bill would amend the Revised Judicature Act to specify that a license to practice law in Michigan would be subject to suspension as provided by the Support and Visitation Enforcement Act (to be amended by House Bill 4138 and Senate Bill 173) and the Regulated Occupation Support Enforcement Act (to be created by House Bill 4136). The bill could not take effect unless Senate Bill 173 and House Bills 4135 through 4138 were enacted. Assuming those bills were enacted, the bill would take effect 180 days after it was enacted.

MCL 600.909

### *FISCAL IMPLICATIONS:*

Fiscal information is not available.

### *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 bill, together with its companions, would apply. It is hoped that rather than lose a license, a payer will pay overdue support or agree to payment arrangements.

#### *Against:*

In attempting to regulate attorneys, the bill overreaches itself. The constitution assigns to the supreme court the power to, by court rule, establish, modify, amend and simplify the practice and procedure of all courts in the state. Part of that authority is the power to discipline attorneys, who are officers of the court. By inserting itself into matters of attorney qualifications and licensure, the bill raises issues of the separation of powers and attempts an unconstitutional intrusion into matters that are properly within the jurisdiction of the judicial branch.

#### *Response:*

According to the Legal Research Division of the Legislative Service Bureau, a survey of applicable case law leads to the conclusion that "legislation may regulate the practice of law, if the legislation does not tend to impair the proper administration of judicial functions, an area of regulation reserved

to the Michigan Supreme Court." Thus, "as suspension of an attorney's license for failure to pay child support would not tend to impair the proper administration of judicial functions, suspensions may be required in such instances by state law."

***Against:***

Constitutional issues aside, the bill's approach may be off the mark. As attorneys are officers of the court, the Attorney Grievance Commission presumably could at present act against an attorney who violated a court order in the form of an order to pay child support, and failed in his or her responsibility as an officer of the court. What is needed, perhaps, is not legislation so much as an understanding that an attorney who flaunts an order for child support is engaging in behavior that reflects on his or her fitness as a lawyer.

***Response:***

There appears to be nothing in the Michigan Rules of Professional Conduct, which comprise the supreme court's authoritative statement of a lawyers ethical obligations, that would authorize the attorney grievance commission to discipline an attorney for failure to comply with a court order. Such behavior would not constitute professional misconduct as outlined in the rules. Before the commission acted to suspend an attorney for failure to pay support, it probably would look to the supreme court to issue a rule explicitly extending the necessary authority.

***Against:***

Together with its companion legislation, the bill proposes license sanctions for matters that have nothing to do with professional ability. Worse, by eliminating a person's means to practice his or her profession, the legislation would eliminate a person's ability to pay support; the delinquent payer might be punished, but so would the support recipient. It would be better to seek other avenues of enforcing support orders against the self-employed, such as attaching bank accounts.

***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 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.

***POSITIONS:***

A representative of the Department of Social Services testified in support of the bill. (6-17-93)

The Family Support Council supports the concept of the bill. (6-21-93)

The Friend of the Court Association supports the concept of the bill. (6-21-93)

The State Bar of Michigan does not oppose licensure sanctions for attorneys who fail to pay court-ordered support, but believes that such sanctions should be imposed through court rule, rather than statute. (6-18-93)