



**House
Legislative
Analysis
Section**

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CHILD SUPPORT/LICENSE ACTIONS

**House Bill 5384 (Substitute H-1)
Sponsor: Rep. Lyn Bankes**

**House Bill 5385 as introduced
Sponsor: Rep. Sharon Gire**

**House Bill 5386 as introduced
Sponsor: Rep. Michelle McManus**

**House Bill 5387 as introduced
Sponsor: Rep. Mike Green**

**House Bill 5388 (Substitute H-1)
Sponsor: Rep. Sandra Hill**

**House Bill 5389 (Substitute H-1)
Sponsor: Rep. Eric Bush**

**First Analysis (12-5-95)
Committee: Human Services**

House Bills 5384-5389 (12-5-95)

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, 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.

Another similar problem stems from the actions of some custodial parents to purposefully frustrate or even deny court-ordered visitation to the non-custodial parent without legitimate reason. This intentional frustration of visitation is not merely a violation of a court order, but also serves to deny the children involved contact with one of their parents. Due to the apparent correlation between the failure of court ordered visitation and the failure to pay support, legislation has

been offered to suspend occupational or drivers licenses of those custodial parents who fail to comply with court-ordered visitation.

THE CONTENT OF THE BILLS:

The bills would provide for the suspension of a professional, occupational, or driver's license for failure to pay a support arrearage or failure to comply with court ordered visitation. ("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, or if application of a makeup visitation schedule was ineffective in resolving a visitation dispute. The party whose license was to be suspended would have an opportunity for a hearing and to agree to a payment schedule (assuming the court decided the payer had the resources) or makeup visitation schedule (assuming the parent demonstrated a good faith effort to comply with the visitation schedule) before the court ordered the licensing agency to suspend the license. The court could condition a license on compliance with a payment or makeup visitation schedule. A suspension order would be rescinded immediately (and the appropriate agency notified within seven business days) after the individual agreed to a

payment or makeup visitation schedule. A more detailed explanation follows.

House Bill 5384 and House Bill 5388 would both 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 under certain circumstances, and to authorize the court to issue a suspension order. The two bills are identical in most respects; however, House Bill 5388 would allow for the suspension of a driver's license, while House Bill 5384 would allow for the suspension of an occupational or professional license. An occupational license would include any license issued by a state agency with regulatory authority over that occupation that allows an individual to legally engage in a regulated occupation or any license that allows the individual to use a specific title in the practice of an occupation, profession, or vocation.

Commencing with new support cases, every support order would have to require both the payer and the payee to inform the friend of the court as to whether he or she had an occupational or professional license (under House Bill 5384) or a driver's or chauffeurs license (under House Bill 5388). Also, a payer or payee would have to immediately notify the friend of the court of any change in his or her license status.

The friend of the court would be able to initiate an action to suspend the license of either: a) the payer of support under a court order if there was a support arrearage in an amount greater than one month's periodic support payments, an order of income withholding either was not available or had not been successful, and the payer held a license subject to suspension under one of the bills, or b) the custodial parent, if the court determined that the use of makeup visitation had not been successful in resolving a visitation dispute and that the custodial parent had a license subject to revocation under either bill.

Suspension of a license for failure to pay support. If the friend of the court found grounds to initiate an action to suspend a payer's license, it would be required to notify the payer that it intended to order the suspension of his or her license for failure to comply with the support order.

The notice issued by the friend of the court would have to inform the payer of the amount of the arrearage and that his or her license could be suspended as a result of his or her failure to pay the arrearage. The friend of the court would have to notify the payer that he or she could demand a hearing and that the order to suspend his or her license would be entered and sent to the

appropriate agency unless the payer either paid the arrearage or, within 21 days of the date of the notice, requested a hearing.

The notice would also have to indicate that if the payer believed the support order should be modified due to a change of circumstances, he or she could file a petition with the court for a modification of the support order. In addition, the notice would have to inform the payer of his or her options at the hearing: that the payer could object to the proposed suspension based on mistaken identity or on a mistake of fact as to the amount of support owed, or that the payer could offer a schedule for paying off the arrearage.

If the payer requested a hearing, the court would have to hold the hearing within 30 days after the payer's request. The entry of an order suspending the payer's license would be delayed pending the outcome of the hearing. If the court felt it were necessary, it could, on its own initiative, consolidate a hearing on the suspension of a license under House Bill 5384 or House Bill 5388 with a hearing on a petition for modification of support.

After 21 days after the date on which the notice had been mailed, the court would be able to order the suspension of a payer's license if the payer failed to respond to the notice within 21 days (by either requesting and appearing for a hearing or by paying the arrearage), or if, following a hearing, the court determined that the payer was able to pay at least part of the support arrearage and had failed to do so. If the court determined at the hearing that an arrearage existed and the payer could have paid all of some of the amount due, the court would be required to order the payment of the arrearage in one or more payments of a specified amount.

If the court ordered the suspension of a license, the friend of the court would have to send a copy of the suspension order to either the secretary of state (under House Bill 5388) or the appropriate occupational regulatory agency (under House Bill 5384). The suspension order would be required to indicate that the license would be suspended within seven days after the order had been received by the appropriate agency. If the payer agreed to a payment schedule to pay off the arrearage, the court would rescind the suspension order, effective immediately. The friend of the court would then be required to notify the appropriate licensing agency within seven business days. If the payer had not responded in any manner to the notice, the friend of the court would be required to serve a copy of the order on the payer by personal service or by registered mail,

return receipt requested, with delivery restricted to the payer.

Failure to allow court-ordered visitation or makeup visitation. If the court determined that the use of makeup visitation had not been successful in resolving a custody dispute and that the custodial parent had a license which was subject to suspension under either House Bill 5384 or 5388, the court could condition the custodial parent's retention of his or her license upon compliance with the court's order for makeup and ongoing visitation. If the custodial parent failed to comply with the court's makeup visitation schedule, the court would find the custodial parent in contempt and, after notice and an opportunity for a hearing, could order the suspension of his or her license in the same fashion as it would with a payer who had failed to pay his or her arrearage.

After a suspension order had been entered, the court could order a makeup visitation schedule, provided the parent demonstrated a good faith effort to comply with the schedule. The court, if it ordered makeup visitation, would have to rescind the suspension order in the same fashion as it would rescind a similar order stemming from a failure to pay support. Within seven business days, the friend of the court would have to inform the appropriate licensing agency of the order rescinding the suspension of the parent's license.

House Bill 5384 is tie-barred to House Bills 5385, 5386, and 5387. House Bill 5388 is tie-barred to House Bill 5389.

House Bill 5385 would create the Regulated Occupation Support Enforcement Act, which would require regulatory agencies of the state of Michigan to suspend licenses in accordance with House Bill 5384. 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.

Unless notified that the suspension order had been rescinded, an occupational regulatory agency would have to suspend the individual's license within seven business days after receiving a suspension order. If a suspension order was rescinded under House Bill 5384, the agency would have to reinstate a license and the reinstatement would be effective upon its entry by the court and the payment of any reinstatement fees required by the occupational regulatory agency. The

agency would be required to reinstate the occupational license within seven business days after receipt of the rescission order and the individual's payment of any reinstatement fee required by regulatory agency. 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 5385 is tie-barred to House Bills 5384 and 5386.

Under the Administrative Procedures Act, regulatory agencies are required to give licensees facing license sanctions the opportunity to show compliance with all lawful requirements for the license. House Bill 5386 would amend the act to exempt suspensions under the Regulated Occupation Support Enforcement Act (House Bill 5385) and those under the Support and Visitation Enforcement Act (as amended by House Bill 5384) from application of that provision of the Administrative Procedures Act (MCL 24.292). The bill is tie-barred to House Bills 5385 and 5384.

House Bill 5387 would amend the Revised Judicature Act (MCL 600.909) to specify that a license to practice law in Michigan would be also be subject to suspension under the provisions of the Support and Visitation Enforcement Act (to be amended by House Bill 5384) and the Regulated Occupation Support Enforcement Act (which would be created by House Bill 5385). The bill would not take effect unless House Bills 5384, 5385 and 5386 were also enacted.

House Bill 5389 would add a section to the Michigan Vehicle Code (MCL 257.320e) to require the secretary of state to comply with a driver's license suspension order issued under the Support and Visitation Enforcement Act by suspending the licensee's operator's or chauffeur's license within seven business days after the receipt of the suspension order. An order rescinding an order suspending a license would be effective upon its entry by the court and the licensee's payment of a \$85 license reinstatement fee. The bill would require the secretary of state to reinstate the licensee's license within seven days of the receipt of an order rescinding the suspension and the payment of the required reinstatement fee. Such fees would have to be deposited in the state general fund and would be required to be used to cover the secretary of state's expenses in processing the suspension and reinstatement of driver's licenses revoked under the bill.

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 bills would apply, and many can no doubt be found among the 6.6 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.

Further, the bills also include language to allow for the suspension of the licenses' of custodial parents who refuse to cooperate with visitation orders. This will hopefully increase compliance with visitation orders and decrease the use of visitation as a means of punishing the payer for real or imagined wrongs not related to the payer's ability to deal appropriately with the child. It is also hoped that this will decrease the perceived imbalance between the efforts made to bring about compliance with visitation as compared to those made to compel payment of support.

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 bills could also have unintended consequences for the employees of some businesses. In many cases an individual who holds an occupational license may be the owner of a business that employs other licensed or unlicensed people. If such a business owner loses his or her license under these bills, the people who are employed by that business could lose their jobs as well. For example, a plumbing contractor who owns a plumbing contracting business and employs several plumbers and

other staff is required to be a licensed master plumber in order to run his or her business. If, as a result of his or her failure to comply with a support or visitation order, he or she loses his or her occupational license, he or she would no longer be able to legally act as an employer. Thus, the employees of the contracting business would also be punished, by being put out of work, for their employer's failure to meet his or her support or visitation obligations. The same situation would occur in cases where a solo practitioner of either law or medicine lost his or her license under the bills; the staff would not legally be able to continue to work in the profession.

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. Furthermore, although the possession of a professional license can arguably be equated with an ability to pay support, a similar argument cannot be made as to the possession of a driver's license. Thus, revocation of a payer's driver's license could affect his or her ability to get or maintain employment, even though the arrearage may have resulted not from a refusal to pay but from an inability to pay. 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:

The bills do not provide equal notice to custodial parents that they may offer a reason for their failure to comply with court ordered visitation or that they may risk the loss of their license for failure to comply with the visitation order. While a payer who fails to pay would be notified that he or she could object to the proposed suspension based on mistaken identity or on a mistake of fact as to the amount of support owed, the custodial parent who has failed to comply with visitation is not given similar notice in the legislation as to his or her opportunity to offer reasons for his or her failure to comply.

Often there are very good reasons for custodial parent's failure to comply with visitation, reasons from physical or mental abuse to insobriety of the parent seeking visitation. The bills should contain language notifying the custodial parent that he or she will have an opportunity to explain his or her reasons for refusing visitation in the same manner as a noncustodial parent may offer excuses as to his or her failure to pay

support. Furthermore, there is no evidence to show that lack of visitation is anywhere near as common a problem as failure to pay support.

Moreover, there are likely to be serious complications in attempting to enforce the provisions for violations of visitation orders. When there is a dispute over payment or non-payment of support, there is usually tangible evidence as to whether payment was made. However, in visitation disputes there is usually no such tangible evidence; an incident occurred and there are usually two different views as to what happened and who was at fault. In addition, it is possible, even likely, that a non-custodial parent could simply not show up for visitation and then claim to have been denied visitation in order to get at the custodial parent for whatever reason. As a result when a visitation dispute or potential dispute arises, the party who believes him or herself to be in the right will likely end up calling the police in order to have corroborating evidence as to their view of what caused the failure in the visitation.

Response:

The method of reviewing visitation disputes would remain the same; a determination would still have to be made, first, that the visitation was actually denied, and second, that the denial was wrongful. The process of going first to the friend of the court for mediation of the dispute and then to the court, if mediation is unsuccessful, would still be in place. No revocation of a license would occur without the issuance of a contempt order from the court.

Against:

In attempting to regulate attorneys, House Bill 5387 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 a memo by the Legal Research Division of the Legislative Service Bureau (done as similar legislation was considered in 1993), 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 lawyer's 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.

POSITIONS:

The Department of Social Services supports the bills. (12-1-95)

The Friend of the Court Association supports the concept of bills. (12-1-95)

The National Organization for Women supports the bills. (12-1-95)

The Michigan Coalition Against Domestic Violence supports the concept of the bills. (12-4-95)

The Children's Rights Council supports the bills' provisions which require equal enforcement measures for violations of support and visitation, but opposes the revocation of licenses as an enforcement tool. (12-1-95)

For Children (a Kalamzaoo-based organization) supports the bills' provisions which require equal enforcement measures for violations of support and visitation, but opposes the revocation of licenses as an enforcement tool. (12-1-95)

The Michigan Chapter of the Air Conditioning Contractors of America opposes the revocation of occupational licenses, but supports the revocation of

driver's licenses as a means of enforcing visitation and/or support orders. (12-1-95)

The Metropolitan Detroit Chapter of the Sheet Metal and Air Conditioning Contractors National Association opposes the revocation of occupational licenses, but supports the revocation of driver's licenses as a means of enforcing visitation and/or support orders. (12-1-95)

The Michigan Plumbing and Mechanical Contractors Association opposes the revocation of occupational licenses, but supports the revocation of driver's licenses as a means of enforcing visitation and/or support orders. (12-1-95)

The National Congress for Fathers and Children opposes the revocation of driver's licenses, but supports the revocation of occupational licenses if amendments are made to provide for due process and actual notice prior to revocation. (12-1-95)

The Michigan Parents for Children Coalition opposes the bills. (12-1-95)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.