



**House
Legislative
Analysis
Section**

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CHILD SUPPORT/LICENSE ACTIONS

**House Bill 5384 as enrolled
Public Act 235 of 1996
Sponsor: Rep. Lyn Bankes**

**House Bill 5385 as enrolled
Public Act 236 of 1996
Sponsor: Rep. Sharon Gire**

**House Bill 5386 as enrolled
Public Act 237 of 1996
Sponsor: Rep. Michelle McManus**

**House Bill 5387 as enrolled
Public Act 238 of 1996
Sponsor: Rep. Mike Green**

**House Bill 5388 as enrolled
Public Act 239 of 1996
Sponsor: Rep. Sandra Hill**

**House Bill 5389 as enrolled
Public Act 240 of 1996
Sponsor: Rep. Eric Bush**

**Senate Bill 881 as enrolled
Public Act 336 of 1996
Sponsor: Sen. Michael Bouchard**

**Third Analysis (6-18-96)
Committee: Human Services**

House Bills 5384-5389 and Senate Bill 881 (6-18-96)

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 parenting time to the non-custodial parent without legitimate reason. This intentional frustration of parenting time 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 parenting time 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 parenting time.

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 parenting time. ("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 parenting time schedule was ineffective in resolving a parenting time 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 parenting time schedule (assuming the parent demonstrated a good faith effort to comply with the parenting time 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 parenting time 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 parenting time schedule. A more detailed explanation follows.

House Bill 5384, House Bill 5388 and Senate Bill 881 would all amend the Support and Parenting Time 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 House bills are identical in most respects; however, House Bill 5388 would allow for the suspension of a driver's license and/or an occupational or professional license, while House Bill 5384 would allow for the suspension of only occupational or professional licenses (since House Bill 5388 was signed into law after House Bill 5384, House Bill 5388's provisions will take effect over those of House Bill 5384).

Senate Bill 881 also contains amendments to sections of the act amended by House Bill 5388. These amendments would authorize the court to issue orders suspending both the occupational licenses of non-compliant payers and/or their driver's licenses. It should be noted that House Bill 5388 does not include language empowering the courts to impose the sanction of revoking a party's occupational license, although it does provide authority to revoke driver's licenses. Senate Bill 881 would allow the court to enter an order making suspension of a payer's occupational or driver's license conditional upon compliance with an order to pay a support arrearage in

one or more scheduled installments. The provision could only be authorized in situations where the amount that a payer was in arrears was equal to more than three months support payments. If a payer failed to comply with an arrearage payment schedule, the court could -- after notice and an opportunity for a hearing -- order suspension of the payer's occupational license.

If the court ordered suspension of an occupational license, then the court would proceed to follow the requirements specified under the provisions of House Bill 5388. 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 (defined in the bills as 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) or a driver's or chauffeurs license. Also, a payer or payee would be required to immediately notify the friend of the court of any change in his or her driver's or occupational license status.

The friend of the court would be able to petition the court for an order to suspend the occupational and/or driver's licenses of either: a) the payer of support under a court order if there was a support arrearage in an amount greater than three months' 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, or b) the custodial parent, if the court determined that the use of makeup parenting time had not been successful in resolving a parenting time dispute and that the custodial parent had a driver's or occupational license. However, the friend of the court could not consider a payer to have an arrearage if the payer were able to produce evidence (including, but not limited to, pay stubs, wage statements, etc.) that an amount equal to or greater than the money owed under the support order had been withheld from the payer's income.

Both House bills would allow a "source of income" (an employer) to discharge or refuse to employ a person who had a license revoked if the license was necessary for the individual to engage in the occupation. However, the bills would not allow for a source of income to use the suspension of a license under the bills as grounds for refusing to employ, discharging, taking disciplinary action against, or penalizing a payer unless the suspended license was legally required in order for the payer to perform the job.

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 could not petition the court for an order to suspend a payer's license without notifying the payer that it intended to do so.

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 driver's and/or occupational 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, within the allotted time, the payer requested a hearing, the entry of an order suspending the payer's license would be delayed pending the outcome of the hearing. If the payer petitioned for a modification of support, the court would be required to consolidate the hearing on the suspension of a license with the hearing on the petition for modification of support, unless the court, on the record, found good cause to require the hearings to be held separately. If the court found that the hearings should be held separately, the hearing on the petition for modification of the support order would be required to be held first.

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. The bills would provide the court with the authority to condition the suspension of a payer's driver's license on his or her failure to comply with the court's order to pay the arrearage. If the court ordered a payer to pay an arrearage and the payer failed to comply, the bill would give the court the authority to order the suspension of the payer's driver's license after

notice and an opportunity for a hearing. In order to warrant such an action, however, it would have to be established that the payer's accrued arrearage was in excess of an amount equal to three month's worth of periodic payments under the payer's support order.

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 or the appropriate occupational regulatory agency. 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 who was subject to a suspension order did not respond in any manner to the notice provided, the friend of the court would be required to wait at least 14 days after the date the office first attempted to serve a copy of the order on the payer before sending the suspension order to the appropriate occupational regulatory agency. The service of the order on the payer would have to be made by personal service or by registered or certified mail, return receipt requested, with delivery restricted to the payer.

Failure to allow court-ordered parenting time or makeup parenting time. The friend of the court would be required to commence a civil contempt proceeding in circuit court if the use of makeup parenting time had been unsuccessful in resolving a parenting time dispute. The friend of the court would be required to provide the parent who had violated the parenting time order with notice to inform the parent of the possible sanctions if the parent were found in contempt and of the parent's right to request a hearing for modification of parenting time within 14 days after he or she received the notice. The court would be required to hold a hearing on the request for modification of parenting time unless the dispute were otherwise resolved, and would be required to combine the hearing with the hearing on the violation of the parenting time order unless the court determined, based on the record, that there was good cause to have the hearings held separately.

If the court determined that the use of makeup parenting time had not been successful in resolving a custody dispute and that the custodial parent had a license which was subject to suspension, 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 parenting time. If the custodial parent failed to comply with the court's makeup parenting time 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 or licenses 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 parenting time schedule, provided the parent demonstrated a good faith effort to comply with the schedule. The court, if it ordered makeup parenting time, 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 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 (and 5388). 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 or 5388, the agency would have to reinstate the 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 reissue the occupational license within seven business days after receipt of the rescission order and the individual's payment of any reinstatement fee required by the 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.

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 Parenting Time Enforcement Act (as amended by House Bills 5384 and 5388) from application of that provision of the Administrative Procedures Act (MCL 24.292).

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, 5388 and Senate Bill 881) and the Regulated Occupation Support Enforcement Act (to be created by House Bill 5385). [Note: The "Support and Visitation Enforcement Act" has recently been renamed the "Support and Parenting Time Enforcement Act".]

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 Parenting Time 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, and, unless the license had been otherwise suspended, revoked, or invalidated, the license would be immediately reinstated and valid. The bill would require the secretary of state to reissue 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.

The bills are all tie-barred to one another and would take effect January 1, 1997.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, although the bills would add to the duties of the friend of the court, they would have no significant fiscal impact on the courts.

The bills allow the departments to charge their customary reinstatement fees for those licensees affected. This increased revenue should cover any additional cost incurred by the departments. There is no estimate as to the number of licenses that could be suspended under these bills.

The bills would have an indeterminate fiscal impact on the Family Independence Agency (FIA) budget. The FIA Office of Child Support Enforcement would incur some increased costs, but the amount cannot be determined at this time. Information regarding an occupational license would need to be incorporated into the support enforcement data collection system for each affected child support payer. The capability to match information on licenses with the Department of Commerce would be needed to enhance enforcement. Also, child support enforcement system staff would need some specific training on system changes, but these costs may not be

significant. The FIA Family Independence Program could incur some program savings from increased support collections from payers whose families are state welfare recipients. An increase in arrearage collections, currently received as a result of increased enforcement through possible license suspension, would offset assistance program expenditures. At this time it is not possible to determine how many license holders are child support payers with outstanding support payments. However, the FIA could be requested to monitor the impact of the bills and report to the legislature. (5-13-96)

According to the House Fiscal Agency, House Bill 5385 would increase state revenues in an indeterminate amount depending on the number of occupational license holders who violate the support and parenting time enforcement act. Revenues resulting from the legislation would offset the administrative costs to the departments. (12-6-95)

According to the House Fiscal Agency, House Bill 5384 would minimally increase costs to the local courts to provide for additional hearings. (12-1-95) According to the House Fiscal Agency, House Bills 5386, 5387, and 5388 would have no fiscal impact. (12-5-95, 12-6-95, and 12-13-95, respectively)

According to the House Fiscal Agency, House Bill 5389 would increase state costs and revenues. According to Department of State estimates, about 300 drivers would have their license suspended under this statute. The reinstatement fee for a driver's license would generate approximately \$12,000 to \$15,000, while annual administrative costs would be about \$30,000. Initial start-up costs to the state would approach \$70,000. (12-13-95)

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 parenting time orders. This will hopefully increase compliance with parenting time orders and decrease the use of parenting time 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 parenting time 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 parenting time 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 parenting time 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:

There is no evidence to show that denial of parenting time 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 parenting time 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 parenting time 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 parenting time and then claim to have been denied parenting time in order to get at the custodial parent for whatever reason. As a result when a parenting time 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 parenting time.

Response:

The method of reviewing parenting time disputes would remain the same; a determination would still have to be made, first, that the parenting time 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:

The bills require unnecessarily expensive means of notification of a suspension order for payers who have failed to respond to prior notices. This provides payers who have ignored prior attempts at notification better notice than those who have at least made an effort to respond. The assertion that such extensive efforts at notification are necessary to make certain that a license is not revoked without first notifying the individual who is about to lose his or her license are specious since current rules require both payer and payee to keep the FOC apprised of their current addresses. Thus, unless the party in question has either purposefully or negligently failed to update his or her address with the FOC, notice

via regular mail should be adequate. The increased costs associated with requiring the FOC to track down and serve those individuals who are most likely purposefully attempting to avoid the FOC will serve to virtually eliminate the usefulness of license revocation as an enforcement tool.

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.

Analyst: W. Flory

■ 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.