



**Senate Fiscal Agency**  
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**BILL ANALYSIS**



**Telephone: (517) 373-5383**  
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Senate Bill 881 (as enrolled)  
 House Bills 5384 through 5389 (as enrolled)  
 Sponsor: Senator Michael J. Bouchard (Senate Bill 881)  
 Representative Lyn Bankes (House Bill 5384)  
 Representative Sharon Gire (House Bill 5385)  
 Representative Michelle McManus (House Bill 5386)  
 Representative Mike Green (House Bill 5387)  
 Representative Sandra Hill (House Bill 5388)  
 Representative Eric Bush (House Bill 5389)  
 Senate Committee: Families, Mental Health and Human Services  
 House Committee: Human Services

**PUBLIC ACT 336 of 1996**  
**PUBLIC ACTS 235 through 240 of 1996**

Date Completed: 8-13-96

**RATIONALE**

According to the Family Independence Agency (FIA), a major factor contributing to child poverty and reliance on public assistance is the failure of noncustodial parents to meet their court-ordered support obligations. Although Michigan employs a variety of support enforcement remedies, the one considered most effective--income withholding--apparently is unavailable or ineffective for those who are self-employed or change jobs frequently. To reach this population, many people advocate the suspension of a parent's occupational or driver's license as an enforcement tool. According to the FIA, 31 states had enacted license suspension legislation for this purpose as of August 1995. Reportedly, the experience of other states indicates that this legislation is an effective means of increasing child support collections, and that the *threat* of license suspension is generally sufficient to produce compliance with support orders. Many people also believe that parents who fail to comply with parenting time orders, as well, should be subject to potential license suspension.

**CONTENT**

**Senate Bill 881, and House Bills 5384 and 5386 through 5389, amend various acts to provide for the suspension of an occupational license or a driver's license for failure to pay a support arrearage or to comply with court-ordered parenting time. House Bill 5385 creates the "Regulated Occupation Support Enforcement Act" to require an occupational regulatory**

**agency to comply with a license suspension order. The bills will take effect January 1, 1997.**

Each of the bills, except House Bill 5387, is tie-barred to all of the other bills. House Bill 5387 is tie-barred to House Bills 5384, 5385, and 5386. Following is a more detailed description of the bills.

**House Bill 5384**

The bill amends the Support and Parenting Time Enforcement Act to allow a court to suspend the occupational license of a parent if he or she fails to comply with a parenting time order. The bill defines "occupational license" as a certificate, registration, or license issued by an occupational regulatory agency that allows an individual legally to engage in a regulated occupation or that allows an individual to use a specific title in the practice of an occupation, profession, or vocation. "Occupational regulatory agency" means a department, bureau, or agency of this State that has regulatory authority over a regulated occupation.

Under the Act, if the Office of the FOC determines that civil contempt proceedings should be commended to resolve a parenting time dispute, the FOC is required to file with the circuit court a petition for an order to show cause why either parent who has violated a parenting time order should not be held in contempt. The bill extends

this requirement to cases in which the FOC determines that application of a make-up parenting policy is unsuccessful in resolving a parenting time dispute. The bill also requires the FOC to notify the parent who is the subject of the petition. The notice must include at least a list of each possible sanction if the parent is found in contempt, and the right of the parent to a hearing on a proposed modification of parenting time if requested within 14 days after the date of the notice.

Currently, if the court finds that either parent has violated a parenting time order, the court must find that parent in contempt and may require additional terms and conditions consistent with the parenting time order, modify the parenting time order, order make-up parenting time, order the parent to pay a fine, and/or commit the parent to jail. Under the bill, if the parent holds an occupational license, the court also may condition the suspension of the parent's occupational license upon noncompliance with an order for make-up and ongoing parenting time.

The bill prohibits a source of income from using the suspension of an occupational license as the basis for refusing to employ, discharging, taking disciplinary action against, or imposing a penalty against a payer unless the suspended license is legally required for the payer's performance of the job. The bill specifies that the Act does not prevent a source of income from refusing to employ or discharging an individual whose occupational license is suspended if that license is a necessary predicate to engaging in that occupation, vocation, or profession.

The bill also requires support orders to require payers and payees to keep the Office of the FOC informed if they hold an occupational license.

#### **House Bill 5385**

The bill creates the Regulated Occupation Support Enforcement Act to require an occupational regulatory agency to comply with a license suspension order issued as provided in the Support and Parenting Time Enforcement Act within seven business days after receiving the suspension order.

The bill provides that an order rescinding a suspension order issued under the Support and Parenting Time Enforcement Act will be effective upon its entry by the court and payment by the licensee of the customary reinstatement fee, if any, charged by the occupational regulatory

agency. The occupational regulatory agency must reissue the license of a licensee whose suspension order is rescinded within seven business days after receiving the rescission order and payment of the appropriate reinstatement fee. An occupational regulatory agency must send a notice of the license reinstatement to the licensee upon reinstatement.

The bill defines "regulated occupation" as an occupation, profession, or vocation that requires a license as a predicate for the practice of the occupation, profession, or vocation or that provides for the use of a specific title in the practice of the occupation, profession, or vocation. "License" and "occupational regulatory agency" have the same meanings as "occupational license" and "occupational regulatory agency", respectively, as defined in House Bill 5384.

#### **House Bill 5388**

The bill amends the Support and Parenting Time Enforcement Act to allow the Office of the Friend of the Court (FOC) to petition the court for an order to suspend a payer's occupational license or driver's license, or both, if all other following circumstances are true:

- An arrearage has accrued in an amount greater than the amount of periodic support payments payable for three months under the payer's support order.
- The payer holds an occupational or driver's license, or the payer's occupation requires an occupational license.
- An order of income withholding is not applicable or has been unsuccessful in assuring regular payments on the support obligation and on the arrearage.

The FOC may not file a petition as authorized in the bill unless it sends the payer a notice that contains all of the following information:

- The amount of the arrearage.
- That the payer's occupational or driver's license, or both, may be subject to an order of suspension.
- That the suspension order will be entered and sent to the occupational regulatory agency that issued the license or to the Secretary of State unless the payer responds by paying the arrearage or requesting a hearing within 21 days after the date the notice is mailed.

- That at the hearing the payer may either suggest to the court a schedule for the payment of the arrearage, or object to the proposed suspension based on a mistake of fact concerning the overdue support amount or the payer's identity.
- That, if the payer believes that the amount of support ordered should be modified due to a change in circumstances, the payer may file a petition with the court for modification of the support order.

Within 21 days after the date on which the notice is mailed to a payer, the payer may request a hearing on the proposed suspension. If the payer requests a hearing within that time, entry of the suspension order must be delayed pending the outcome of the hearing.

If a payer files a petition for modification of the support order and the petition is pending at the date scheduled for a hearing on a license suspension, the court must consolidate the hearing on the license suspension and a hearing on the petition for modification unless the court finds for good cause shown on the record that the hearings should be held separately. If the court finds that the hearings should be held separately, the hearing on the petition for modification must be held before the hearing on the suspension.

If the court determines that the payer has accrued an arrearage on his or her support order and that the payer has, or by the exercise of due diligence may have, the capacity to pay all or some portion of the amount due, the court must order the payment of the arrearage in one or more scheduled installments of a sum certain.

After 21 days after the notice of concerning a petition for a license suspension is sent, the court may order the suspension of the payer's occupational or driver's license, or both, if the payer fails to comply with an arrearage payment schedule, or if the payer fails to pay the arrearage and fails either to request a hearing or to appear for a hearing scheduled after such a request.

After entry of a suspension order, a payer may agree to, and the court may order, a schedule for the payment of the arrearage. If the court orders a schedule for payment, it must enter an order rescinding the suspension order that is effective as provided in the Regulated Occupation Support Enforcement Act or in the Michigan Vehicle Code. If a suspension order has been sent, within seven business days after entry of the order rescinding

the suspension order, the FOC must send a copy of the order rescinding the suspension order to the regulatory agency or to the Secretary of State, as appropriate.

Under the Act, the court may find a payer in contempt if it finds that the payer is in arrears and has the capacity to pay out of currently available resources all or part of the amount due under the support order. The payer also may be found in contempt if the court finds that the payer, by the exercise of diligence, could have the capacity to pay under the support order and has failed or refused to do so. If the court finds a payer in contempt, it immediately may enter one of several orders committing the person to a county jail or a penal or correctional facility that is not operated by the Michigan Department of Corrections. Under the bill, if the payer holds a driver's license, the court instead may condition the suspension of the payer's driver's license upon noncompliance with an order for payment of the arrearage in one or more scheduled installments of a sum certain. A court may not order this sanction unless the court finds that the payer has accrued an arrearage of support payments in an amount greater than the amount of periodic support payments payable for three months under his or her support order. If the court enters an order conditioning the suspension of a payer's driver's license on noncompliance with an arrearage payment order, and the payer fails to comply with the payment schedule, the court must order suspension of the payer's driver's license after notice and opportunity for a hearing.

The bill includes references to a person's driver's license in provisions, added by House Bill 5384, that require payers and payees to keep the FOC informed if they hold an occupational license; prohibit a source of income from using the suspension of a license as the basis for refusing to employ, discharging, disciplining, or penalizing a payer; and allow the FOC to condition the suspension of a parent's license upon noncompliance with a parenting time order.

If the court enters an order conditioning the suspension of a parent's occupational or driver's license upon noncompliance with a parenting time order, and the parent fails to comply with the parenting time schedule, the court must find the parent in contempt and, after notice and an opportunity for a hearing, may order suspension of the parent's occupational or driver's license, or both. After entry of a suspension order, a parent may agree to a make-up parenting time schedule. The court may order a make-up parenting time

schedule if the parent demonstrates a good faith effort to comply with the parenting time order. If the court orders a make-up parenting time schedule, it must enter an order rescinding the suspension order that is effective as provided in the Regulated Occupation Support Enforcement Act or the Michigan Vehicle Code. Within seven business days after entry of the order rescinding the suspension order, the FOC must send a copy of the order rescinding the suspension order to the occupational regulatory agency or to the Secretary of State, as appropriate. As with a license suspensions resulting from failure to pay an arrearage, the parent may request, and the court must hold, a hearing.

If the court orders a suspension of an occupational or driver's license for failure to pay an arrearage or to comply with a parenting time order, the order must indicate that the occupational regulatory agency or the Secretary of State, as appropriate, must suspend the license within seven business days after receiving the suspension order. The FOC must send a copy of the suspension order to the regulatory agency that issues the occupational license or to the Secretary of State, as appropriate. If the payer is the subject of a suspension order for failure to pay an arrearage, and has failed to respond in any manner to the notice of suspension, the FOC may not send the suspension order to the regulatory agency or to the Secretary of State until at least 14 days after the date the FOC first attempts service of a copy of the order on the payer by personal service or by registered or certified mail, return receipt requested, with delivery restricted to the payer.

The bill provides that the FOC may not consider a payer to have an arrearage if the payer produces documentary evidence that money has been withheld from his or her income in an amount equal to or greater than the amount required under the payer's support order. This documentary evidence includes, but is not limited to, pay stubs, wage statements, or other written income information produced by the payer's employer.

#### **Senate Bill 881**

The bill amends the Support and Parenting Time Enforcement Act to include the suspension of a payer's occupational license in provisions, added by House Bill 5388, concerning the suspension of the driver's license of a support payer who is in arrears on child support payments and fails to comply with an arrearage payment schedule.

#### **House Bill 5386**

The Administrative Procedures Act requires agencies to give licensees subject to license sanctions the opportunity to show compliance with all lawful requirements of the license before the beginning of proceedings for suspension, revocation or other license sanctions. The bill specifies that this opportunity to show compliance provision applies except as otherwise provided in the Support and Parenting Time Enforcement Act and the Regulated Occupation Support Enforcement Act.

#### **House Bill 5387**

The bill amends the Revised Judicature Act to specify that a license to practice law in Michigan is subject to suspension as provided in the Support and Parenting Time Enforcement Act and in the Regulated Occupation Support Enforcement Act.

#### **House Bill 5389**

The bill amends the Michigan Vehicle Code to require the Secretary of State to comply with a license suspension order issued under the Support and Parenting Time Enforcement Act and to suspend the driver's license of a licensee within seven business days after receiving the suspension order.

Upon being informed of a suspension, the Secretary of State may not issue a license to a person whose license already is suspended, revoked, or denied, or who does not have a license to suspend, until the person complies with other provisions of the Code.

An order rescinding a suspension order issued under the Support and Parenting Time Enforcement Act will be effective upon its entry by the court and payment by the licensee of the reinstatement fee. Unless the license is otherwise suspended, revoked, or invalid, the license immediately must be reinstated and valid. The Secretary of State must reissue the driver's license of a licensee whose suspension order is rescinded within seven business days after receiving an order rescinding the suspension order and payment of the reinstatement fee.

A person whose driver's license is suspended under the bill must pay a license reinstatement fee of \$85 to the Secretary of State before a license is issued or returned to the person. The fee must be

deposited in the State General Fund and used to defray the expenses of the Secretary of State in processing the suspension and reinstatement of drivers' licenses.

MCL 552.633 & 552.635 (S.B. 881)  
552.602 et al. (H.B. 5384)  
338.3431-338.3436 (H.B. 5385)  
24.292 (H.B. 5386)  
600.909 (H.B. 5387)  
552.602 et al. (H.B. 5388)  
257.320e et al. (H.B. 5389)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

While various measures, such as income withholding and the threat of jail, may be used to get reluctant payers to meet their support obligations, these methods are frequently inadequate, especially against payers who do not receive a regular paycheck. The prospect of license suspension should be most effective against a particularly vexing population of delinquent payers: those who have the ability to pay but are self-employed and can thus evade income withholding. Other states' experience indicates that license suspension legislation is an effective way to increase support collections. According to the FIA, since Maine enacted occupational and driver's license suspension legislation in 1993, support collections there have increased by approximately \$13 million per year. When the passage of a license revocation bill was publicly announced in Colorado, there was an immediate increase in collections, including individual payments of \$40,000 and \$28,000 before the law took effect, the FIA reports. In Massachusetts, occupational and driver's license revocation legislation has been in effect since 1994. Reportedly, after the state sent notice of the law to its 60,000-some delinquent payers, the state support enforcement agency received \$600,000 in collections; a second notice produced collections in excess of \$400,000.

According to the FIA, these bills are an important component of the State's welfare reform initiative, "To Strengthen Michigan Families", which is designed to promote family independence and self-sufficiency, and to encourage personal responsibility. Just as the State holds custodial parents responsible for working toward self-

sufficiency, it also must hold noncustodial parents accountable for meeting their court-ordered child support obligations. These bills recognize the importance of parents' obligations to provide both financial and emotional support. At the same time, the bills protect individuals' due process rights by requiring notice to parents and giving them the opportunity for a hearing. Parents also will have the opportunity to arrange a repayment plan or a make-up parenting time plan to avoid the imposition of license sanctions.

### **Supporting Argument**

By giving the court another tool to enforce parenting time orders, the bills will help strengthen parent-child relationships and promote co-parenting by noncustodial parents. Earlier this year, a number of statutory references to "visitation" were replaced with references to "parenting time", which helps recognize the significance of children's time with their noncustodial parent, and the harm that may come to children when custodial parents wrongfully deny noncustodial parents the opportunity to interact with their children. Although the court already may order various sanctions for parenting time violations, the threatened loss of an occupational or driver's license should encourage parents to comply with parenting time orders in the first place. In addition, improved family ties may lead to increased child support collections, as parents who are more involved with their children also may be more likely to fulfill their support obligations.

### **Opposing Argument**

Suspending a parent's occupational or driver's license might be highly counterproductive, particularly as a method of increasing child support collections. Clearly, if someone must have either type of license to perform his or her job, or must have a driver's license to get to and from work, removing the person's ability to earn income also will reduce or eliminate his or her ability to pay child support. While the delinquent payer might be punished, the support recipient also could be harmed.

**Response:** The bills aim to get the attention of recalcitrant individuals and provide a strong incentive to comply with support and parenting time obligations. Experience elsewhere indicates that simply the threat of license suspension can be sufficient to improve compliance. Furthermore, suspension will be far from automatic: Parents will receive advance notice and an opportunity for a hearing, and will have a chance to arrange a payment or parenting time schedule before a suspension actually is imposed.

### **Opposing Argument**

Allowing the suspension of driver's and occupational licenses for parenting time violations actually might lead to increased parental conflict and abuse. Because of the lack of direct evidence, noncompliance with a parenting time order can be very difficult to prove or disprove, and judicial decisions may be based on one parent's word against the other's. This means that a low-income custodial parent, who cannot afford an attorney to fight frivolous charges of noncompliance, may be at a serious disadvantage if the noncustodial parent can afford legal fees. Reportedly, when many parents try to get child support orders increased, the noncustodial parents threaten to sue for custody. Now, the potential for a license suspension also might be used as a tool by noncustodial parents to discourage support modifications. In addition, the threat of a license suspension may be very dangerous in domestic violence situations, by giving the batterer another way to control the victim through the court system.

### **Opposing Argument**

According to the Friend of the Court Association, the bills' notification and hearing requirements create a very cumbersome and costly administrative process. The Association reports that implementing the bills statewide could cost over \$7 million in personnel, mailing, paper, and data processing expenses. In particular, many FOC offices might need additional hearing referees to handle license suspension hearings (either pursuant to contempt of court proceedings for support and parenting time violations, or pursuant to a petition filed in response to an FOC suspension notice due to nonpayment of support). Also, the notice requirements are especially unreasonable because the parents who will receive suspension notices are fully aware of their noncompliance. Since the bills' trigger for suspension in cases of unpaid child support is three months' arrearage, while the existing trigger for regular contempt proceedings is substantially less, these parents already will have been given many due process and procedural notifications. Without additional funds for personnel, it is questionable whether the FOC offices will widely implement the bills.

### **Opposing Argument**

By providing for the suspension of attorneys' licenses, House Bill 5387 raises a separation of powers issue. Article 6, Section 5 of the State Constitution authorizes the Michigan Supreme Court, by rule, to establish the practice and procedure in all courts of this State. This includes the regulation of individuals who practice law, which is carried out by the State Bar of Michigan

pursuant to rules promulgated by the Supreme Court. All attorneys who are licensed to practice in Michigan are subject to the disciplinary authority of the State Bar, and may receive a license suspension or revocation for various violations. While attorneys, like other individuals with an occupational license, should be sanctioned for failure to comply with child support and parenting time orders, the suspension of a license to practice law should be handled through the existing attorney disciplinary system. House Bill 5387, however, specifies that a license to practice law is subject to suspension as provided in the Support and Parenting Time Enforcement Act and the Regulated Occupation Support Enforcement Act. Perhaps a better approach would be to require the Friend of the Court to notify the Attorney Grievance Commission of attorneys who fail to comply with support and parenting time orders, and allow the Commission to perform its investigative and suspension functions.

Legislative Analyst: S. Margules

### **FISCAL IMPACT**

The bills will add to the administrative duties of the Friend of the Court. Additional resources will be required for mailing notices as well as data entry. The fiscal impact, however, is indeterminate as suspension of one's occupational license will be just another enforcement option available to the courts. The court may or may not choose this option. At the same time, if a notice to a parent regarding possible suspension of one's license is effective as data from other states have shown, the need for numerous hearings may be decreased. Costs will depend on the number of cases in which the courts order the suspension of one's occupational license, and the number of parties requesting hearings on the matter. One such estimate by the Michigan Friend of the Court Association puts the Statewide estimate at roughly \$7 million, 95% of which is personnel costs.

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 might be suspended under these bills.

The bills will have an indeterminate fiscal impact on the Family Independence Agency (FIA) (formerly the Department of Social Services (DSS)) budget. The FIA Office of Child Support Enforcement will incur some increased costs, but the Senate Fiscal Agency is unable to determine exactly what they will be at this time. Information

regarding an occupational license will 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 Consumer and Industry Services will be needed to enhance enforcement. Also, Child Support Enforcement System staff will need some specific training on system changes, but this cost may not be significant. The FIA Family Independence Program (FIP) (formerly the Aid to Families with Dependent Children (AFDC) program) might 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 will 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.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.