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BILL ANALYSIS

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Senate Bill 881 (as introduced 2-27-96)
Sponsor: Senator Michael J. Bouchard
Committee: Families, Mental Health and Human Services

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CONTENT

The bill would amend the Support and Parenting Time Enforcement Act to establish a process under which the occupational license of a support payer could be suspended if the payer owed more than three months of unpaid support, or the occupational license of a parent could be suspended if he or she violated a parenting time order. The bill would require a payer or parent to be given notice and an opportunity for a hearing before his or her occupational license could be suspended, and would require a suspension to be rescinded if the individual complied with a payment schedule or a makeup parenting time schedule. In addition, someone whose license was subject to suspension could petition for a modification of support or parenting time.

The bill would allow the Office of the Friend of the Court (FOC) to send a payer a notice of intent to order the suspension of the payer's occupational license if all of the following circumstances were true:

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

"Occupational license" would mean a certificate, registration, or license issued by an occupational regulatory agency that allowed an individual legally to engage in a regulated occupation or that allowed the individual to use a specific title in the practice of an occupation, profession, or vocation. "Occupational regulatory agency" would mean a State department, bureau, or agency that had regulatory authority over an individual issued an occupational license.

The notice would have to contain the following information:

- The amount of the arrearage.
- That the payer's occupational license could be subject to an order of suspension.
- That the suspension order would be entered and sent to the occupational regulatory agency that issued the license unless the payer responded by paying the arrearage or requesting a hearing within 21 days after the date the notice was mailed.

- That at the hearing the payer could 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 believed that the amount of support ordered should be modified due to a change in circumstances, the payer could file a petition with the court for modification of the support order.

Within 21 days after the date on which the notice was mailed to a payer, the payer could request a hearing on the proposed suspension. If the payer requested the hearing, entry of the suspension order would have to be delayed pending the outcome of the hearing. The court would have to hold the hearing within 30 days after the date of the payer's request.

If a payer filed a petition for modification of the support order and the petition were pending at the date scheduled for a hearing on a license suspension, the court would have to consolidate the hearing on the license suspension and a hearing on the petition for modification unless the court found for good cause shown on the record that the hearings should be held separately.

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

After 21 days after the notice of intended license suspension was sent, the court could order the suspension of the payer's occupational license if the payer failed to comply with an arrearage payment schedule, or if the payer failed to pay the arrearage and failed either to request a hearing or to appear for a hearing scheduled after such a request.

If the court ordered a suspension of an occupational license for failure to pay an arrearage, the order would have to indicate that the occupational regulatory agency would have to suspend the license within seven business days after receiving the suspension order. The Office of the FOC would have to send a copy of the suspension order to the regulatory agency that issued the license. If the payer were the subject of a suspension order and had failed to respond in any manner to the notice of suspension, the Office of the FOC could not send the suspension order to the regulatory agency until at least 14 days after the date the Office first attempted 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.

After entry of a suspension order, a payer could agree to, and the court could order, a schedule for the payment of the arrearage. If the court ordered a schedule for payment, it would have to enter an order rescinding the suspension order that was effective as provided in the Regulated Occupation Support Enforcement Act (Proposed by House Bill 5385). Within seven business days after entry of the order rescinding the suspension order, the Office of the FOC would have to send a copy of the order rescinding the suspension order to the regulatory agency.

The Support and Parenting Time Enforcement Act specifies that if the court finds a payer in contempt of court, the court 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. The court may find a payer in contempt of court 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. Senate Bill 881 would give the court the additional option of conditioning the continuation of a payer's occupational license upon compliance with an order for payment of the arrearage in one or more scheduled installments of a sum certain. If the court entered an order concerning the conditions of a payer's occupational license and the payer failed to comply with the arrearage payment schedule, the court would have to order suspension of the payer's occupational license.

The Act currently states that if the Office of the FOC determines that sanctions should be imposed for parenting time violations, the Office is required to begin a civil contempt proceeding to resolve a dispute concerning parenting time with a minor child by filing 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 would extend this requirement to situations in which the Office determined that application of a makeup parenting time policy was unsuccessful in resolving a parenting time dispute. The bill also would require the Office to notify the parent who was the subject of the petition. The notice would have to include at least a list of each possible sanction if the parent were 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.

The Act currently states that if the court finds that either parent has violated a parenting time order, the court can find that parent in contempt and can take various actions including entering orders, requiring additional terms and conditions consistent with the parenting time order, and incarcerating the parent. The bill would give the court the additional option of conditioning the continuation of the parent's occupational license upon compliance with an order for makeup and ongoing parenting time. If the court entered such an order, and the parent failed to comply with the makeup and ongoing parenting time schedule, the court would have to find the parent in contempt and, after notice and an opportunity for a hearing, could order suspension of the parent's occupational license.

After entry of a suspension order, a parent could agree to a makeup parenting time schedule. The court could order a makeup parenting time schedule if the parent demonstrated a good faith effort to comply with the parenting time order. If the court ordered a makeup parenting time schedule, it would have to enter an order rescinding the suspension order that was effective as provided in the Regulated Occupation Support Enforcement Act. Within seven business days after entry of the order rescinding the suspension order, the Office of the FOC would have to send a copy of the order rescinding the suspension order to the regulatory agency.

Within 14 days after the date of the notice, a parent who was notified of a petition to show cause why he or she violated a parenting time order could request a hearing on a proposed modification of parenting time. The court would have to hold the requested hearing unless the parenting time dispute were resolved by other means. The court would have to combine the hearing with the hearing on the order to show cause unless the court found for good cause shown on the record that the hearings should be held separately.

The bill would prohibit 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 were legally required for the payer's performance of the job. The bill specifies that the Act would not prevent a source of income from refusing to employ or discharging an individual whose occupational license was suspended if that license were a necessary predicate to engaging in that occupation, vocation, or profession.

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

The bill is tie-barred to House Bills 5385, 5386, and 5387. House Bill 5385 would create the “Regulated Occupation Support Enforcement Act” to require an occupational regulatory agency to comply with a license suspension order. House Bill 5386 would amend the Administrative Procedures Act to specify that the Act’s requirement that agencies give licensees subject to license sanctions the opportunity to show compliance before the imposition of the sanctions would apply except as otherwise provided in the Support and Parenting Time Enforcement Act and the Regulated Occupation Support Enforcement Act. House Bill 5387 would amend the Revised Judicature Act to specify that a license to practice law in Michigan would be subject to suspension as provided in the Support and Parenting Time Enforcement Act and in the Regulated Occupation Support Enforcement Act.

MCL 552.602 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The fiscal impact on the State would depend on whether the possible suspension of one’s occupational license was effective in making payers comply with support orders. If it were, then there could be potential savings to the State for families who need public assistance due to noncompliance with support orders by payers.

The bills would 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.

Fiscal Analyst: M. Bain
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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.