

Act No. 235
Public Acts of 1996
Approved by the Governor
June 5, 1996
Filed with the Secretary of State
June 5, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

**Introduced by Reps. Bankes, Horton, Green, Rocca, Perricone, Kukuk, Bush, Hill, Gire, Pitoniak, Curtis, Willard, Munsell and Baade
Reps. Baird, DeMars, Goschka, London, McBryde, McManus, Oxender, Rhead and Weeks named co-sponsors**

ENROLLED HOUSE BILL No. 5384

AN ACT to amend sections 2, 3, 23, and 44 of Act No. 295 of the Public Acts of 1982, entitled as amended "An act to provide for and to supplement statutes that provide for the enforcement of support, health care, and parenting time orders with respect to divorce, separate maintenance, paternity, child custody, and spouse support; to prescribe certain provisions of those orders; to prescribe the powers and duties of the circuit court and friend of the court; to prescribe certain duties of certain employers and other sources of income; to provide for penalties and remedies; and to repeal acts and parts of acts," sections 2 and 3 as amended by Act No. 120 of the Public Acts of 1996, section 23 as amended by Act No. 210 of the Public Acts of 1985, and section 44 as amended by Act No. 25 of the Public Acts of 1996, being sections 552.602, 552.603, 552.623, and 552.644 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 2, 3, 23, and 44 of Act No. 295 of the Public Acts of 1982, sections 2 and 3 as amended by Act No. 120 of the Public Acts of 1996, section 23 as amended by Act No. 210 of the Public Acts of 1985, and section 44 as amended by Act No. 25 of the Public Acts of 1996, being sections 552.602, 552.603, 552.623, and 552.644 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 2. As used in this act:

(a) "Employer" means an individual, sole proprietorship, partnership, association, or private or public corporation, the United States or a federal agency, this state or a political subdivision of this state, another state or a political subdivision of another state, or another legal entity that hires and pays an individual for his or her services.

(b) "Friend of the court act" means Act No. 294 of the Public Acts of 1982, being sections 552.501 to 552.535 of the Michigan Compiled Laws.

(c) "Income" means any of the following:

(i) Commissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his or her employer and successor employers.

(ii) A payment due or to be due in the future to an individual from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental unemployment benefits, or worker's compensation.

(iii) An amount of money that is due to an individual as a debt of another individual, partnership, association, or private or public corporation, the United States or a federal agency, this state or a political subdivision of this state, another state or a political subdivision of another state, or another legal entity that is indebted to the individual.

(d) "Insurer" means an insurer, health maintenance organization, health care corporation, or other group, plan, or entity that provides health care coverage in accordance with any of the following acts:

(i) The public health code, Act No. 368 of the Public Acts of 1978, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws.

(ii) The insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

(iii) The nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws.

(e) "Medical assistance" means medical assistance as established under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396g and 1396i to 1396v.

(f) "Occupational license" means a certificate, registration, or license issued by an occupational regulatory agency that allows an individual to legally engage in a regulated occupation or that allows the individual to use a specific title in the practice of an occupation, profession, or vocation.

(g) "Occupational regulatory agency" means a state department, bureau, or agency that has regulatory authority over an individual issued an occupational license.

(h) "Office of child support" means the office of child support established in section 2 of the office of child support act, Act No. 174 of the Public Acts of 1971, being section 400.232 of the Michigan Compiled Laws.

(i) "Office of the friend of the court" means the agency created in section 3 of the friend of the court act, being section 552.503 of the Michigan Compiled Laws.

(j) "Order of income withholding" means an order entered by the circuit court providing for the withholding of a payer's income to enforce a support order under this act.

(k) "Payer" means an individual who is ordered by the circuit court to pay support.

(l) "Plan administrator" means that term as used in relation to a group health plan under section 609 of part 6 of subtitle B of title I of the employee retirement income security act of 1974, Public Law 93-406, 29 U.S.C. 1169, if the health care coverage plan of the individual who is responsible for providing a child with health care coverage is subject to that act.

(m) "Political subdivision" means a county, city, village, township, educational institution, school district, or special district or authority of the state or of a local unit of government.

(n) "Recipient of support" means the following:

(i) The spouse, if the support order orders support for the spouse.

(ii) The custodial parent or guardian, if the support order orders support for a minor child or a child who is 18 years of age or older.

(iii) The family independence agency, if support has been assigned to that department.

(o) "Referee" means a person who is designated as a referee under the friend of the court act.

(p) "Source of income" means an employer or successor employer or another individual or entity that owes or will owe income to the payer.

(q) "Support" means all of the following:

(i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses.

(ii) The payment of money ordered by the circuit court under the paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled Laws, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

(iii) A surcharge accumulated under section 3a.

(r) "Support order" means an order entered by the circuit court for the payment of support, whether or not a sum certain.

Sec. 3. (1) A support order issued by a court of this state shall be enforced as provided in this section.

(2) Except as otherwise provided in this section, a support order that is part of a judgment or is an order in a domestic relations matter as defined in section 31 of the friend of the court act, being section 552.531 of the Michigan Compiled Laws, is a judgment on and after the date each support payment is due, with the full force, effect, and

attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification. Retroactive modification of a support payment due under a support order is permissible with respect to any period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support.

(3) This section does not apply to an ex parte interim support order or a temporary support order entered under supreme court rule.

(4) The office of the friend of the court shall make available to a payer or payee the forms and instructions described in section 17a of the friend of the court act, being section 552.517a of the Michigan Compiled Laws.

(5) This section does not prohibit a court approved agreement between the parties to retroactively modify a support order. This section does not limit other enforcement remedies available under this act or any other act.

(6) Every support order that is part of a judgment issued by a court of this state or that is an order in a domestic relations matter as defined in section 31 of the friend of the court act shall include all of the following:

(a) Substantially the following statement: "Except as otherwise provided in section 3 of the support and parenting time enforcement act, Mich. Comp. Laws §552.603 (1979), a support order that is part of a judgment or that is an order in a domestic relations matter as defined in section 31 of the friend of the court act, Mich. Comp. Laws §552.531 (1979), is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification. A surcharge will be added to support payments that are past due as provided in section 3a of the support and parenting time enforcement act, Mich. Comp. Laws §552.603a (1979)."

(b) A requirement that, within 21 days after the payer or payee changes his or her address, that person report the new address in writing to the friend of the court.

(c) A requirement that both the payer and payee keep the office of the friend of the court informed if he or she holds an occupational license.

(7) A support order shall not accrue interest.

Sec. 23. (1) A source of income shall not use an order of income withholding as a basis for refusing to employ, discharging, taking disciplinary action against, or imposing a penalty against a payer. A source of income who refuses to employ, discharges, disciplines, or penalizes a payer in violation of this section is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, and shall be required to make full restitution to the aggrieved payer, including reinstatement and back pay.

(2) A source of income shall not use the suspension, as provided for in this act, 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. This 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 engage in that occupation, vocation, or profession.

Sec. 44. (1) If the office of the friend of the court determines that application of a makeup parenting time policy under section 41(1)(a) is unsuccessful in resolving a parenting time dispute or that action should otherwise be taken under section 41(1)(b), the office of the friend of the court shall commence 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 office of the friend of the court shall notify the parent who is the subject of the petition. The notice shall include at least all of the following:

(a) A list of each possible sanction if the parent is found in contempt.

(b) 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, as provided in section 45.

(2) If the court finds that either parent has violated a parenting time order, the court shall find that parent in contempt and may do 1 or more of the following:

(a) Require additional terms and conditions consistent with the court's parenting time order.

(b) After notice to both parties and a hearing, if requested by a party, on a proposed modification of parenting time, modify the parenting time order to meet the best interests of the child.

(c) Order that makeup parenting time be provided for the noncustodial parent to take the place of wrongfully denied parenting time.

(d) Order the parent to pay a fine of not more than \$100.00.

(e) Commit the parent to the county jail.

(f) Commit the parent to the county jail with the privilege of leaving the jail during the hours the court determines necessary, and under the supervision as the court considers necessary, for the purpose of allowing the parent to go to and return from his or her place of employment.

(g) If the parent holds an occupational license, condition the suspension of the parent's occupational license upon noncompliance with an order for makeup and ongoing parenting time.

(3) A commitment under subsection (2)(e) or (f) shall not exceed 45 days for the first finding of contempt or 90 days for each subsequent finding of contempt. A parent committed under subsection (2)(e) or (f) shall be released if the court has reasonable cause to believe that the parent will comply with the parenting time order.

Section 2. This amendatory act shall take effect January 1, 1997.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) Senate Bill No. 881.
- (b) House Bill No. 5385.
- (c) House Bill No. 5386.
- (d) House Bill No. 5387.
- (e) House Bill No. 5388.
- (f) House Bill No. 5389.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.