

Act No. 239
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. Hill, Horton, Green, Perricone, Rocca, Kukuk, Bush, Gire, Pitoniak, Willard, Munsell and Baade

ENROLLED HOUSE BILL No. 5388

AN ACT to amend sections 2, 3, 23, 33, 35, 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, sections 23 and 35 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, 552.633, 552.635, and 552.644 of the Michigan Compiled Laws; and to add sections 7a, 28, 29, 30, and 45.

The People of the State of Michigan enact:

Section 1. Sections 2, 3, 23, 33, 35, 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, sections 23 and 35 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, 552.633, 552.635, and 552.644 of the Michigan Compiled Laws, are amended and sections 7a, 28, 29, 30, and 45 are added to read as follows:

Sec. 2. As used in this act:

(a) "Driver's license" means license as that term is defined in section 25 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.25 of the Michigan Compiled Laws.

(b) "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.

(c) "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.

(d) "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.

(e) "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.

(f) "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 1396v.

(g) "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.

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

(i) "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.

(j) "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.

(k) "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.

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

(m) "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.

(n) "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.

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

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

(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.

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

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

(r) "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.

(s) "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 and if he or she holds a driver's license.

(7) A support order shall not accrue interest.

Sec. 7a. The friend of the court shall not consider a payer to have an arrearage if the payer produces documentary evidence that money has been withheld from the payer's 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.

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 or driver's 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 or driver's license is suspended if that license is a necessary predicate to engage in that occupation, vocation, or profession.

Sec. 28. (1) The office of the friend of the court may petition the court for an order to suspend a payer's occupational or driver's license, or both, if all of the following circumstances are true:

(a) An arrearage has accrued in an amount greater than the amount of periodic support payments payable for 3 months under the payer's support order.

(b) The payer holds an occupational or driver's license, or the payer's occupation requires an occupational license.

(c) An order of income withholding is not applicable or has been unsuccessful in assuring regular payments on the support obligation and regular payments on the arrearage.

(2) An office of the friend of the court shall not file a petition as authorized under subsection (1) unless the office sends the payer a notice that includes all of the following information:

(a) The amount of the arrearage.

(b) That the payer's occupational or driver's license, or both, may be subject to an order of suspension.

(c) That the suspension order will be entered and sent to the occupational regulatory agency issuing the payer's occupational license or the secretary of state unless the payer responds by paying the arrearage or requesting a hearing within 21 days after the date of mailing the notice.

(d) That, at the hearing, the payer may do either of the following:

(i) Object to the proposed suspension based on a mistake of fact concerning the overdue support amount or the payer's identity.

(ii) Suggest to the court a schedule for the payment of the arrearage.

(e) 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.

Sec. 29. (1) Within 21 days after the date on which the notice described in section 28 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 shall be delayed pending the outcome of the hearing.

(2) If a payer files a petition for modification of the support order and the petition is pending at the date scheduled for a hearing under this section, the court shall consolidate the hearing under this section 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 shall be held before the hearing scheduled under this section.

(3) If the court determines that the payer has accrued an arrearage on his or her support order and that the payer has, or could by the exercise of due diligence have, the capacity to pay all or some portion of the amount due, the court shall order the payment of the arrearage in 1 or more scheduled installments of a sum certain.

(4) After 21 days after the date on which the notice described in section 28 is sent, the court may order the suspension of the payer's occupational or driver's license, or both, under either of the following circumstances:

(a) The payer fails to pay the arrearage and fails to either request a hearing as provided in subsection (1) or appear for a hearing scheduled after such a request.

(b) The payer fails to comply with an arrearage payment schedule ordered under this section.

Sec. 30. (1) If the court orders a suspension of an occupational or driver's license under section 29, 33, 35, or 45, the order shall indicate that the occupational regulatory agency or the secretary of state, as appropriate, shall suspend the occupational or driver's license within 7 business days after receipt of the suspension order. The office of the friend of the court shall send a copy of the suspension order to the occupational regulatory agency that issues the occupational license or the secretary of state, as appropriate. If the payer is the subject of a suspension order under section 29 and has failed to respond in any manner to the notice given under section 28, the office of the friend of the court shall not send the suspension order to the regulatory agency or secretary of state until at least 14 days after the date the office 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.

(2) After entry of a suspension order under section 29, 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 of the arrearage, the court shall enter an order rescinding the suspension order that is effective as provided in section 4 of the regulated occupation support enforcement act or in section 321c of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.321c of the Michigan Compiled Laws. If a suspension order has been sent, within 7 business days after entry of the order rescinding the suspension order, the office of the friend of the court shall send a copy of the order rescinding the suspension order to the occupational regulatory agency that issues the payer's occupational license or the secretary of state, as appropriate.

Sec. 33. (1) The court may find a payer in contempt if the court finds that the payer is in arrears and if the court is satisfied that the payer has the capacity to pay out of currently available resources all or some portion of the amount due under the support order. In the absence of proofs to the contrary introduced by the payer, the court shall presume that the payer has currently available resources equal to 4 weeks of payments under the support order. The court shall not find that the payer has currently available resources of more than 4 weeks of payments without proof of those resources by the office of the friend of the court or the recipient of support. Upon finding a payer in contempt of court under this section, the court may immediately enter an order doing 1 of the following:

(a) Committing the payer to the county jail.

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

(c) Committing the payer to a penal or correctional facility in this state that is not operated by the state department of corrections.

(d) If the payer holds a driver's license, conditioning the suspension of the payer's driver's license upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision 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 3 months under the payer's support order.

(2) If the court enters an order under subsection (1)(d) and the payer fails to comply with the arrearage payment schedule, after notice and opportunity for a hearing, the court shall order suspension of the payer's driver's license and proceed under section 30.

Sec. 35. (1) The court may find a payer in contempt if the court finds that the payer is in arrears and if the court is satisfied that by the exercise of diligence the payer could have the capacity to pay all or some portion of the amount due under the support order and that the payer fails or refuses to do so.

(2) Upon finding a payer in contempt of court under this section, the court may immediately enter an order doing either of the following:

(a) Committing the payer to the county jail with the privilege of leaving the jail during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to go to and return from his or her place of employment or, if the person wishes to seek employment, to seek employment.

(b) If the payer holds a driver's license, conditioning the suspension of the payer's driver's license upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision 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 3 months under the payer's support order.

(3) Notwithstanding the length of commitment imposed under this section, an unemployed payer committed to a county jail under this section who finds employment shall be released from jail if either of the following applies:

(a) The payer is self-employed and has completed 2 consecutive weeks at his or her employment.

(b) The payer is employed and has completed 2 consecutive weeks at his or her employment and an order of income withholding is effective.

(4) If the court enters an order under subsection (2)(b) and the payer fails to comply with the arrearage payment schedule, after notice and opportunity for a hearing, the court shall order suspension of the payer's driver's license and proceed under section 30.

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 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 or driver's license, condition the suspension of the parent's occupational or driver's 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.

Sec. 45. (1) If the court enters an order under section 44(2)(g) and the parent fails to comply with the makeup and ongoing parenting time schedule, the court shall 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, and proceed under section 30.

(2) After entry of a suspension order under subsection (1), a parent may agree to a makeup parenting time schedule. The court may order a makeup parenting time schedule if the parent demonstrates a good faith effort to comply with the parenting time order. If the court orders a makeup parenting time schedule, the court shall enter an order rescinding the suspension order that is effective as provided in section 4 of the regulated occupation support enforcement act or section 321c of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.321c of the Michigan Compiled Laws. Within 7 business days after entry of the order rescinding the suspension order, the office of the friend of the court shall send a copy of the order rescinding the suspension order to the occupational regulatory agency that issues the parent's occupational license or the secretary of state, as appropriate.

(3) Within 14 days after the date of the notice under section 44, a parent who is notified of a petition to show cause under section 44 may request a hearing on a proposed modification of parenting time. The court shall hold the requested hearing unless the parenting time dispute is resolved by other means. The court shall combine the hearing prescribed by this subsection with the hearing on the order to show cause 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 a proposed modification of parenting time shall be held before the hearing on the order to show cause.

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. 5384.
- (c) House Bill No. 5385.
- (d) House Bill No. 5386.
- (e) House Bill No. 5387.
- (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.