



HOUSE BILL No. 5384

November 8, 1995, Introduced by Reps. Bankes, Horton, Green, Rocca, Perricone, Kukuk, Bush, Hill, Gire, Pitoniak, Curtis, Willard, Munsell and Baade and referred to the Committee on Human Services.

A bill to amend sections 2, 3, 33, 35, and 44 of Act No. 295 of the Public Acts of 1982, entitled as amended "Support and visitation enforcement act," sections 2 and 3 as amended by Act No. 141 of the Public Acts of 1995 and sections 35 and 44 as amended by Act No. 210 of the Public Acts of 1985, being sections 552.602, 552.603, 552.633, 552.635, and 552.644 of the Michigan Compiled Laws; and to add sections 26, 26a, 26b, and 26c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 3, 33, 35, and 44 of Act No. 295 of
2 the Public Acts of 1982, sections 2 and 3 as amended by Act
3 No. 141 of the Public Acts of 1995 and sections 35 and 44 as
4 amended by Act No. 210 of the Public Acts of 1985, being sections
5 552.602, 552.603, 552.633, 552.635, and 552.644 of the Michigan

1 Compiled Laws, are amended and sections 26, 26a, 26b, and 26c are
2 added to read as follows:

3 Sec. 2. As used in this act:

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

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

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

14 (i) Commissions, earnings, salaries, wages, and other income
15 due or to be due in the future from ~~his or her~~ AN INDIVIDUAL'S
16 employer and successor employers.

17 (ii) A payment due or to be due in the future from a
18 profit-sharing plan, A pension plan, AN insurance contract, AN
19 annuity, social security, unemployment compensation, supplemental
20 unemployment benefits, ~~and~~ OR worker's compensation.

21 (iii) An amount of money that is due to ~~the payer~~ AN
22 INDIVIDUAL under a support order as a debt of another individual,
23 partnership, association, or private or public corporation, the
24 United States or a federal agency, this state or a political sub-
25 division of this state, another state or a political subdivision
26 of another state, or another legal entity that is indebted to the
27 ~~payer~~ INDIVIDUAL.

1 (D) "OCCUPATIONAL LICENSE" MEANS A CERTIFICATE,
2 REGISTRATION, OR LICENSE ISSUED BY AN OCCUPATIONAL REGULATORY
3 AGENCY THAT ALLOWS AN INDIVIDUAL TO LEGALLY ENGAGE IN A REGULATED
4 OCCUPATION OR THAT ALLOWS THE INDIVIDUAL TO USE A SPECIFIC TITLE
5 IN THE PRACTICE OF AN OCCUPATION, PROFESSION, OR VOCATION.

6 (E) "OCCUPATIONAL REGULATORY AGENCY" MEANS A STATE DEPART-
7 MENT, BUREAU, OR AGENCY THAT HAS REGULATORY AUTHORITY OVER AN
8 INDIVIDUAL ISSUED AN OCCUPATIONAL LICENSE.

9 (F) ~~(d)~~ "Office of child support" means the office of
10 child support established in section 2 of Act No. 174 of the
11 Public Acts of 1971, being section 400.232 of the Michigan
12 Compiled Laws.

13 (G) ~~(e)~~ "Office of the friend of the court" means the
14 agency created in section 3 of the friend of the court act, being
15 section 552.503 of the Michigan Compiled Laws.

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

19 (I) ~~(g)~~ "Payer" means ~~a person~~ AN INDIVIDUAL who is
20 ordered by the circuit court to pay support.

21 (J) ~~(h)~~ "Political subdivision" means a county, city, vil-
22 lage, township, educational institution, school district, or spe-
23 cial district or authority of the state or of a local unit of
24 government.

25 (K) ~~(i)~~ "Recipient of support" means the following:

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

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

4 (iii) The state department of social services, if support
5 has been assigned to the department.

6 (l) ~~(j)~~ "Referee" means a person who is designated as a
7 referee under the friend of the court act.

8 (m) ~~(k)~~ "Source of income" means an employer or successor
9 employer or another individual or entity that owes or will owe
10 income to the payer.

11 (N) ~~(l)~~ "Support" means all of the following:

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

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

23 (iii) A fee accumulated under section 3a.

24 (O) ~~(m)~~ "Support order" means an order entered by the cir-
25 cuit court for the payment of support, whether or not a sum
26 certain.

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

3 (2) Except as otherwise provided in this section, a support
4 order that is part of a judgment or is an order in a domestic
5 relations matter as defined in section 31 of the friend of the
6 court act, ~~Act No. 294 of the Public Acts of 1982,~~ being sec-
7 tion 552.531 of the Michigan Compiled Laws, is a judgment on and
8 after the date each support payment is due, with the full force,
9 effect, and attributes of a judgment of this state, and is not,
10 on and after the date it is due, subject to retroactive
11 modification. Retroactive modification of a support payment due
12 under a support order is permissible with respect to any period
13 during which there is pending a petition for modification, but
14 only from the date that notice of the petition was given to the
15 payer or recipient of support.

16 (3) This section does not apply to an ex parte interim sup-
17 port order or a temporary support order entered ~~pursuant to~~
18 UNDER supreme court rule.

19 (4) The office of the friend of the court shall make avail-
20 able to a payer or payee the forms and instructions described in
21 section 17a of the friend of the court act, ~~Act No. 294 of the~~
22 ~~Public Acts of 1982,~~ being section 552.517a of the Michigan
23 Compiled Laws.

24 (5) This section does not prohibit a court approved agree-
25 ment between the parties to retroactively modify a support
26 order. This section does not limit other enforcement remedies
27 available under this act or any other act.

1 (6) Every support order that is part of a judgment issued by
2 a court of this state or that is an order in a domestic relations
3 matter as defined in section 31 of the friend of the court act ~~7~~
4 ~~Act No. 294 of the Public Acts of 1982,~~ shall include ~~both~~ ALL
5 of the following:

6 (a) Substantially the following statement: "Except as oth-
7 erwise provided in section 3 of the support and visitation
8 enforcement act, Mich. Comp. Laws §552.603 (1979), a support
9 order that is part of a judgment or that is an order in a domes-
10 tic relations matter as defined in section 31 of the friend of
11 the court act, Mich. Comp. Laws §552.531 (1979), is a judgment on
12 and after the date each support payment is due, with the full
13 force, effect, and attributes of a judgment of this state, and is
14 not, on and after the date it is due, subject to retroactive
15 modification. A fee will be added to support payments that are
16 past due as provided in section 3a of the support and visitation
17 enforcement act, Mich. Comp. Laws §552.603a (1979).".

18 (b) A requirement that, within 21 days after the payer or
19 payee changes his or her address, that ~~person~~ INDIVIDUAL report
20 the new address in writing to THE OFFICE OF the friend of the
21 court.

22 (C) A REQUIREMENT THAT BOTH THE PAYER AND PAYEE KEEP THE
23 OFFICE OF THE FRIEND OF THE COURT INFORMED IF HE OR SHE HOLDS AN
24 OCCUPATIONAL LICENSE.

25 SEC. 26. (1) THE OFFICE OF THE FRIEND OF THE COURT MAY SEND
26 TO A PAYER A NOTICE OF INTENT TO ORDER THE SUSPENSION OF THE

1 PAYER'S OCCUPATIONAL LICENSE IF ALL OF THE FOLLOWING
2 CIRCUMSTANCES ARE TRUE:

3 (A) AN ARREARAGE HAS ACCRUED UNDER THE PAYER'S SUPPORT
4 ORDER.

5 (B) THE PAYER HOLDS AN OCCUPATIONAL LICENSE OR THE PAYER'S
6 OCCUPATION REQUIRES AN OCCUPATIONAL LICENSE.

7 (C) AN ORDER OF INCOME WITHHOLDING IS NOT APPLICABLE OR HAS
8 BEEN UNSUCCESSFUL IN ASSURING REGULAR PAYMENTS ON THE SUPPORT
9 OBLIGATION AND REGULAR PAYMENTS ON THE ARREARAGE.

10 (2) THE NOTICE DESCRIBED IN SUBSECTION (1) SHALL CONTAIN THE
11 FOLLOWING INFORMATION:

12 (A) THE AMOUNT OF THE ARREARAGE.

13 (B) THAT THE PAYER'S OCCUPATIONAL LICENSE MAY BE SUBJECT TO
14 AN ORDER OF SUSPENSION.

15 (C) THAT THE SUSPENSION ORDER WILL BE ENTERED AND SENT TO
16 THE OCCUPATIONAL REGULATORY AGENCY ISSUING THE PAYER'S OCCUPA-
17 TIONAL LICENSE UNLESS THE PAYER RESPONDS BY PAYING THE ARREARAGE
18 OR REQUESTING A HEARING WITHIN 21 DAYS AFTER THE DATE OF MAILING
19 THE NOTICE.

20 (D) THAT, AT THE HEARING, THE PAYER MAY DO EITHER OF THE
21 FOLLOWING:

22 (i) OBJECT TO THE PROPOSED SUSPENSION BASED ON A MISTAKE OF
23 FACT CONCERNING THE OVERDUE SUPPORT AMOUNT OR THE PAYER'S
24 IDENTITY.

25 (ii) SUGGEST TO THE COURT A SCHEDULE FOR THE PAYMENT OF THE
26 ARREARAGE.

1 (E) THAT, IF THE PAYER BELIEVES THAT THE AMOUNT OF SUPPORT
2 ORDERED SHOULD BE MODIFIED DUE TO A CHANGE IN CIRCUMSTANCES, THE
3 PAYER MAY FILE A PETITION WITH THE COURT FOR MODIFICATION OF THE
4 SUPPORT ORDER.

5 SEC. 26A. (1) WITHIN 21 DAYS AFTER THE DATE ON WHICH THE
6 NOTICE DESCRIBED IN SECTION 26 IS MAILED TO A PAYER, THE PAYER
7 MAY REQUEST A HEARING ON THE PROPOSED SUSPENSION. IF THE PAYER
8 REQUESTS A HEARING, ENTRY OF THE SUSPENSION ORDER SHALL BE
9 DELAYED PENDING THE OUTCOME OF THE HEARING. THE COURT SHALL HOLD
10 THE HEARING WITHIN 30 DAYS AFTER THE DATE OF THE PAYER'S
11 REQUEST.

12 (2) IF A PAYER FILES A PETITION FOR MODIFICATION OF THE SUP-
13 PORT ORDER AND THE PETITION IS PENDING AT THE DATE SCHEDULED FOR
14 A HEARING UNDER THIS SECTION, THE COURT MAY CONSOLIDATE THE HEAR-
15 ING UNDER THIS SECTION AND A HEARING ON THE PETITION FOR
16 MODIFICATION.

17 (3) IF THE COURT DETERMINES THAT THE PAYER HAS ACCURED AN
18 ARREARAGE ON HIS OR HER SUPPORT ORDER AND THAT THE PAYER HAS, OR
19 COULD BY THE EXERCISE OF DUE DILIGENCE HAVE, THE CAPACITY TO PAY
20 ALL OR SOME PORTION OF THE AMOUNT DUE, THE COURT SHALL ORDER THE
21 PAYMENT OF THE ARREARAGE IN 1 OR MORE SCHEDULED INSTALLMENTS OF A
22 SUM CERTAIN.

23 (4) THE COURT MAY ORDER THE SUSPENSION OF A PAYER'S OCCUPA-
24 TIONAL LICENSE UNDER EITHER OF THE FOLLOWING CIRCUMSTANCES:

25 (A) THE PAYER FAILS TO PAY THE ARREARAGE AND FAILS TO EITHER
26 REQUEST A HEARING AS PROVIDED IN SUBSECTION (1) OR APPEAR FOR A
27 HEARING SCHEDULED AFTER SUCH A REQUEST.

1 (B) THE PAYER FAILS TO COMPLY WITH AN ARREARAGE PAYMENT
2 SCHEDULE ORDERED UNDER THIS SECTION.

3 SEC. 26B. (1) IF THE COURT ORDERS A SUSPENSION OF AN OCCU-
4 PATIONAL LICENSE UNDER SECTION 26A, 33, 35, OR 44, THE ORDER
5 SHALL INDICATE THAT THE OCCUPATIONAL REGULATORY AGENCY SHALL SUS-
6 PEND THE OCCUPATIONAL LICENSE WITHIN 7 BUSINESS DAYS AFTER
7 RECEIPT OF THE SUSPENSION ORDER. THE OFFICE OF THE FRIEND OF THE
8 COURT SHALL SEND A COPY OF THE SUSPENSION ORDER TO THE OCCUPA-
9 TIONAL REGULATORY AGENCY THAT ISSUES THE OCCUPATIONAL LICENSE.

10 (2) AFTER ENTRY OF A SUSPENSION ORDER UNDER SECTION 26A, A
11 PAYER MAY AGREE TO AND THE COURT MAY ORDER A SCHEDULE FOR THE
12 PAYMENT OF THE ARREARAGE. IF THE COURT ORDERS A SCHEDULE FOR
13 PAYMENT OF THE ARREARAGE, THE COURT SHALL ENTER AN ORDER RESCIND-
14 ING THE SUSPENSION ORDER THAT IS EFFECTIVE AS PROVIDED IN SECTION
15 4 OF THE REGULATED OCCUPATION SUPPORT ENFORCEMENT ACT. WITHIN 7
16 BUSINESS DAYS AFTER ENTRY OF THE ORDER RESCINDING THE SUSPENSION
17 ORDER, THE OFFICE OF THE FRIEND OF THE COURT SHALL SEND A COPY OF
18 THE ORDER RESCINDING THE SUSPENSION ORDER TO THE OCCUPATIONAL
19 REGULATORY AGENCY THAT ISSUES THE PAYER'S OCCUPATIONAL LICENSE.

20 SEC. 26C. THIS ACT DOES NOT PREVENT A SOURCE OF INCOME FROM
21 REFUSING TO EMPLOY OR DISCHARGING A PAYER WHOSE OCCUPATIONAL
22 LICENSE IS SUSPENDED IF THAT LICENSE IS A NECESSARY PREDICATE TO
23 ENGAGING IN THAT OCCUPATION, VOCATION, OR PROFESSION.

24 Sec. 33. (1) The court may find a payer in contempt if the
25 court finds that the payer is in arrears and if the court is sat-
26 isfied that the payer has the capacity to pay out of currently
27 available resources all or some portion of the amount due under

1 the support order. In the absence of proofs to the contrary
2 introduced by the payer, the court shall presume that the payer
3 has currently available resources equal to 4 weeks of payments
4 under the support order. The court shall not find that the payer
5 has currently available resources of more than 4 weeks of pay-
6 ments without proof of ~~such~~ THOSE resources by the office of
7 the friend of the court or the recipient of support. Upon find-
8 ing a payer in contempt of court under this section, the court
9 may immediately enter AN ORDER DOING 1 of the following:

10 ~~orders:~~

11 (a) Committing the payer to the county jail.

12 (b) Committing the payer to the county jail with the privi-
13 lege of leaving the jail ~~7~~ during ~~such~~ THE hours ~~as~~ the
14 court determines, and under ~~such~~ THE supervision ~~as~~ the court
15 considers, necessary ~~7~~ for the purpose of allowing the payer to
16 go to and return from his or her place of employment.

17 (c) Committing the payer to ~~any~~ A penal or correctional
18 facility in this state ~~which~~ THAT is not operated by the state
19 department of corrections.

20 (D) IF THE PAYER HOLDS AN OCCUPATIONAL LICENSE, CONDITIONING
21 THE CONTINUATION OF THE PAYER'S OCCUPATIONAL LICENSE UPON COMPLI-
22 ANCE WITH AN ORDER FOR PAYMENT OF THE ARREARAGE IN 1 OR MORE
23 SCHEDULED INSTALLMENTS OF A SUM CERTAIN.

24 (2) IF THE COURT ENTERS AN ORDER UNDER SUBSECTION (1)(D) AND
25 THE PAYER FAILS TO COMPLY WITH THE ARREARAGE PAYMENT SCHEDULE,
26 THE COURT SHALL ORDER SUSPENSION OF THE PAYER'S OCCUPATIONAL
27 LICENSE AND PROCEED UNDER SECTION 26B.

1 Sec. 35. (1) The court may find a payer in contempt if the
2 court finds that the payer is in arrears and if the court is sat-
3 isfied that by the exercise of diligence the payer could have the
4 capacity to pay all or some portion of the amount due under the
5 support order and ~~has failed or refused~~ FAILS OR REFUSES to do
6 so.

7 (2) Upon finding a payer in contempt of court under this
8 section, the court may immediately enter an order ~~committing~~
9 DOING EITHER OF THE FOLLOWING:

10 (A) COMMITTING the payer to the county jail with the privi-
11 lege of leaving the jail ~~—~~ during ~~such~~ THE hours ~~as~~ the
12 court determines, and under ~~such~~ THE supervision ~~as~~ the court
13 considers, necessary ~~—~~ for the purpose of allowing the payer to
14 go to and return from his or her place of employment or, if the
15 person wishes to seek employment, to seek employment.

16 (B) IF THE PAYER HOLDS AN OCCUPATIONAL LICENSE, CONDITIONING
17 THE CONTINUATION OF THE PAYER'S OCCUPATIONAL LICENSE UPON COMPLI-
18 ANCE WITH AN ORDER FOR PAYMENT OF THE ARREARAGE IN 1 OR MORE
19 SCHEDULED INSTALLMENTS OF A SUM CERTAIN.

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

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

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

4 (4) IF THE COURT ENTERS AN ORDER UNDER SUBSECTION (2)(B) AND
5 THE PAYER FAILS TO COMPLY WITH THE ARREARAGE PAYMENT SCHEDULE,
6 THE COURT SHALL ORDER SUSPENSION OF THE PAYER'S OCCUPATIONAL
7 LICENSE AND PROCEED UNDER SECTION 26B.

8 Sec. 44. (1) If the office of the friend of the court
9 determines THAT APPLICATION OF A MAKEUP VISITATION POLICY UNDER
10 SECTION 41(1)(A) IS UNSUCCESSFUL IN RESOLVING A VISITATION DIS-
11 PUTES OR that action should OTHERWISE be taken under section
12 41(1)(b), the office of the friend of the court shall commence a
13 civil contempt proceeding to resolve a dispute concerning visita-
14 tion of a minor child by filing with the circuit court a petition
15 for an order to show cause why either parent who has violated a
16 visitation order should not be held in contempt.

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

20 (a) Require additional terms and conditions consistent with
21 the court's visitation order.

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

25 (c) Order that makeup visitation be provided for the noncus-
26 todial parent to take the place of wrongfully denied visitation.

1 (d) Order the parent to pay a fine of not more than
2 \$100.00.

3 (e) Commit the parent to the county jail.

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

9 (G) IF THE PARENT HOLDS AN OCCUPATIONAL LICENSE, CONDITION
10 THE CONTINUATION OF THE PARENT'S OCCUPATIONAL LICENSE UPON COM-
11 PLIANCE WITH AN ORDER FOR MAKEUP AND ONGOING VISITATION.

12 (3) A commitment under subsection (2)(e) or (f) shall not
13 exceed 45 days for the first finding of contempt or 90 days for
14 ~~any~~ A subsequent finding of contempt. ~~(4)~~ A parent committed
15 under subsection (2)(e) or (f) shall be released if the court has
16 reasonable cause to believe that the parent will comply with the
17 visitation order.

18 (4) IF THE COURT ENTERS AN ORDER UNDER SUBSECTION (2)(G) AND
19 THE PARENT FAILS TO COMPLY WITH THE MAKEUP AND ONGOING VISITATION
20 SCHEDULE, THE COURT SHALL FIND THE PARENT IN CONTEMPT AND MAY
21 ORDER SUSPENSION OF THE PARENT'S OCCUPATIONAL LICENSE AND PROCEED
22 UNDER SECTION 26B.

23 (5) AFTER ENTRY OF A SUSPENSION ORDER UNDER SUBSECTION (4),
24 A PARENT MAY AGREE TO A MAKEUP VISITATION SCHEDULE. THE COURT
25 MAY ORDER A MAKEUP VISITATION SCHEDULE IF THE PARENT DEMONSTRATES
26 A GOOD FAITH EFFORT TO COMPLY WITH THE VISITATION ORDER. IF THE
27 COURT ORDERS A MAKEUP VISITATION SCHEDULE, THE COURT SHALL ENTER

1 AN ORDER RESCINDING THE SUSPENSION ORDER THAT IS EFFECTIVE AS
2 PROVIDED IN SECTION 4 OF THE REGULATED OCCUPATION SUPPORT
3 ENFORCEMENT ACT. WITHIN 7 BUSINESS DAYS AFTER ENTRY OF THE ORDER
4 RESCINDING THE SUSPENSION ORDER, THE OFFICE OF THE FRIEND OF THE
5 COURT SHALL SEND A COPY OF THE ORDER RESCINDING THE SUSPENSION
6 ORDER TO THE OCCUPATIONAL REGULATORY AGENCY THAT ISSUES THE
7 PARENT'S OCCUPATIONAL LICENSE.

8 Section 2. This amendatory act shall not take effect unless
9 all of the following bills of the 88th Legislature are enacted
10 into law:

11 (a) Senate Bill No. _____ or House Bill No. 5387 (request
12 no. 02199'95 **).

13 (b) Senate Bill No. _____ or House Bill No. 5385 (request
14 no. 02200'95 **).

15 (c) Senate Bill No. _____ or House Bill No. 5386 (request
16 no. 02203'95 **).