



HOUSE BILL No. 5388

November 8, 1995, Introduced by Reps. Hill, Horton, Green, Perricone, Rocca, Kukuk, Bush, 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) "DRIVER'S LICENSE" MEANS LICENSE AS THAT TERM IS DEFINED
5 IN SECTION 25 OF THE MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE
6 PUBLIC ACTS OF 1949, BEING SECTION 257.25 OF THE MICHIGAN
7 COMPILED LAWS.

8 (B) ~~(a)~~ "Employer" means an individual, sole proprietor-
9 ship, partnership, association, or private or public corporation,
10 the United States or a federal agency, this state or a political
11 subdivision of this state, another state or a political subdivi-
12 sion of another state, or another legal entity that hires and
13 pays an individual for his or her services.

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

17 (D) ~~(c)~~ "Income" means any of the following:

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

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

25 (iii) An amount of money that is due to ~~the payer~~ AN
26 INDIVIDUAL under a support order as a debt of another individual,
27 partnership, association, or private or public corporation, the

1 United States or a federal agency, this state or a political
2 subdivision of this state, another state or a political subdivi-
3 sion of another state, or another legal entity that is indebted
4 to the ~~payer~~ INDIVIDUAL.

5 (E) ~~(d)~~ "Office of child support" means the office of
6 child support established in section 2 of Act No. 174 of the
7 Public Acts of 1971, being section 400.232 of the Michigan
8 Compiled Laws.

9 (F) ~~(e)~~ "Office of the friend of the court" means the
10 agency created in section 3 of the friend of the court act, being
11 section 552.503 of the Michigan Compiled Laws.

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

15 (H) ~~(g)~~ "Payer" means ~~a person~~ AN INDIVIDUAL who is
16 ordered by the circuit court to pay support.

17 (I) ~~(h)~~ "Political subdivision" means a county, city, vil-
18 lage, township, educational institution, school district, or spe-
19 cial district or authority of the state or of a local unit of
20 government.

21 (J) ~~(i)~~ "Recipient of support" means the following:

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

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

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

3 (K) ~~(j)~~ "Referee" means a person who is designated as a
4 referee under the friend of the court act.

5 (l) ~~(k)~~ "Source of income" means an employer or successor
6 employer or another individual or entity that owes or will owe
7 income to the payer.

8 (M) ~~(l)~~ "Support" means all of the following:

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

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

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

21 (N) ~~(m)~~ "Support order" means an order entered by the cir-
22 cuit court for the payment of support, whether or not a sum
23 certain.

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

26 (2) Except as otherwise provided in this section, a support
27 order that is part of a judgment or is an order in a domestic

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

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

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

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

24 (6) Every support order that is part of a judgment issued by
25 a court of this state or that is an order in a domestic relations
26 matter as defined in section 31 of the friend of the court act —

1 ~~Act No. 294 of the Public Acts of 1982,~~ shall include ~~both~~ ALL
2 of the following:

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

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

19 (C) A REQUIREMENT THAT BOTH THE PAYER AND PAYEE KEEP THE
20 OFFICE OF THE FRIEND OF THE COURT INFORMED IF HE OR SHE HOLDS A
21 DRIVER'S LICENSE.

22 SEC. 26. (1) THE OFFICE OF THE FRIEND OF THE COURT MAY SEND
23 TO A PAYER A NOTICE OF INTENT TO ORDER THE SUSPENSION OF THE
24 PAYER'S DRIVER'S LICENSE IF ALL OF THE FOLLOWING CIRCUMSTANCES
25 ARE TRUE:

26 (A) AN ARREARAGE HAS ACCRUED UNDER THE PAYER'S SUPPORT
27 ORDER.

1 (B) THE PAYER HOLDS A DRIVER'S LICENSE.

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

5 (2) THE NOTICE DESCRIBED IN SUBSECTION (1) SHALL CONTAIN THE
6 FOLLOWING INFORMATION:

7 (A) THE AMOUNT OF THE ARREARAGE.

8 (B) THAT THE PAYER'S DRIVER'S LICENSE MAY BE SUBJECT TO AN
9 ORDER OF SUSPENSION.

10 (C) THAT THE SUSPENSION ORDER WILL BE ENTERED AND SENT TO
11 THE SECRETARY OF STATE UNLESS THE PAYER RESPONDS BY PAYING THE
12 ARREARAGE OR REQUESTING A HEARING WITHIN 21 DAYS AFTER THE DATE
13 OF MAILING THE NOTICE.

14 (D) THAT, AT THE HEARING, THE PAYER MAY DO EITHER OF THE
15 FOLLOWING:

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

19 (ii) SUGGEST TO THE COURT A SCHEDULE FOR THE PAYMENT OF THE
20 ARREARAGE.

21 (E) THAT, IF THE PAYER BELIEVES THAT THE AMOUNT OF SUPPORT
22 ORDERED SHOULD BE MODIFIED DUE TO A CHANGE IN CIRCUMSTANCES, THE
23 PAYER MAY FILE A PETITION WITH THE COURT FOR MODIFICATION OF THE
24 SUPPORT ORDER.

25 SEC. 26A. (1) WITHIN 21 DAYS AFTER THE DATE ON WHICH THE
26 NOTICE DESCRIBED IN SECTION 26 IS MAILED TO A PAYER, THE PAYER
27 MAY REQUEST A HEARING ON THE PROPOSED SUSPENSION. IF THE PAYER

1 REQUESTS A HEARING, ENTRY OF THE SUSPENSION ORDER SHALL BE
2 DELAYED PENDING THE OUTCOME OF THE HEARING. THE COURT SHALL HOLD
3 THE HEARING WITHIN 30 DAYS AFTER THE DATE OF THE PAYER'S
4 REQUEST.

5 (2) IF A PAYER FILES A PETITION FOR MODIFICATION OF THE SUP-
6 PORT ORDER AND THE PETITION IS PENDING AT THE DATE SCHEDULED FOR
7 A HEARING UNDER THIS SECTION, THE COURT MAY CONSOLIDATE THE HEAR-
8 ING UNDER THIS SECTION AND A HEARING ON THE PETITION FOR
9 MODIFICATION.

10 (3) IF THE COURT DETERMINES THAT THE PAYER HAS ACCURED AN
11 ARREARAGE ON HIS OR HER SUPPORT ORDER AND THAT THE PAYER HAS, OR
12 COULD BY THE EXERCISE OF DUE DILIGENCE HAVE, THE CAPACITY TO PAY
13 ALL OR SOME PORTION OF THE AMOUNT DUE, THE COURT SHALL ORDER THE
14 PAYMENT OF THE ARREARAGE IN 1 OR MORE SCHEDULED INSTALLMENTS OF A
15 SUM CERTAIN.

16 (4) THE COURT MAY ORDER THE SUSPENSION OF A PAYER'S DRIVER'S
17 LICENSE UNDER EITHER OF THE FOLLOWING CIRCUMSTANCES:

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

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

23 SEC. 26B. (1) IF THE COURT ORDERS A SUSPENSION OF A
24 DRIVER'S LICENSE UNDER SECTION 26A, 33, 35, OR 44, THE ORDER
25 SHALL INDICATE THAT THE SECRETARY OF STATE SHALL SUSPEND THE
26 DRIVER'S LICENSE WITHIN 7 BUSINESS DAYS AFTER RECEIPT OF THE

1 SUSPENSION ORDER. THE OFFICE OF THE FRIEND OF THE COURT SHALL
2 SEND A COPY OF THE SUSPENSION ORDER TO THE SECRETARY OF STATE.

3 (2) AFTER ENTRY OF A SUSPENSION ORDER UNDER SECTION 26A, A
4 PAYER MAY AGREE TO AND THE COURT MAY ORDER A SCHEDULE FOR THE
5 PAYMENT OF THE ARREARAGE. IF THE COURT ORDERS A SCHEDULE FOR
6 PAYMENT OF THE ARREARAGE, THE COURT SHALL ENTER AN ORDER RESCIND-
7 ING THE SUSPENSION ORDER THAT IS EFFECTIVE AS PROVIDED IN SECTION
8 321C OF THE MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE PUBLIC ACTS
9 OF 1949, BEING SECTION 257.321C OF THE MICHIGAN COMPILED LAWS.
10 WITHIN 7 BUSINESS DAYS AFTER ENTRY OF THE ORDER RESCINDING THE
11 SUSPENSION ORDER, THE OFFICE OF THE FRIEND OF THE COURT SHALL
12 SEND A COPY OF THE ORDER RESCINDING THE SUSPENSION ORDER TO THE
13 SECRETARY OF STATE.

14 SEC. 26C. THIS ACT DOES NOT PREVENT A SOURCE OF INCOME FROM
15 REFUSING TO EMPLOY OR DISCHARGING A PAYER WHOSE DRIVER'S LICENSE
16 IS SUSPENDED IF A DRIVER'S LICENSE IS A NECESSARY PREDICATE TO
17 ENGAGING IN THAT OCCUPATION, VOCATION, OR PROFESSION.

18 Sec. 33. (1) The court may find a payer in contempt if the
19 court finds that the payer is in arrears and if the court is sat-
20 isfied that the payer has the capacity to pay out of currently
21 available resources all or some portion of the amount due under
22 the support order. In the absence of proofs to the contrary
23 introduced by the payer, the court shall presume that the payer
24 has currently available resources equal to 4 weeks of payments
25 under the support order. The court shall not find that the payer
26 has currently available resources of more than 4 weeks of
27 payments without proof of ~~such~~ THOSE resources by the office of

1 the friend of the court or the recipient of support. Upon
2 finding a payer in contempt of court under this section, the
3 court may immediately enter AN ORDER DOING 1 of the following:
4 ~~orders.~~

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

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

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

14 (D) IF THE PAYER HOLDS A DRIVER'S LICENSE, CONDITIONING THE
15 CONTINUATION OF THE PAYER'S DRIVER'S LICENSE UPON COMPLIANCE WITH
16 AN ORDER FOR PAYMENT OF THE ARREARAGE IN 1 OR MORE SCHEDULED
17 INSTALLMENTS OF A SUM CERTAIN.

18 (2) IF THE COURT ENTERS AN ORDER UNDER SUBSECTION (1)(D) AND
19 THE PAYER FAILS TO COMPLY WITH THE ARREARAGE PAYMENT SCHEDULE,
20 THE COURT SHALL ORDER SUSPENSION OF THE PAYER'S DRIVER'S LICENSE
21 AND PROCEED UNDER SECTION 26B.

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

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

4 (A) COMMITTING the payer to the county jail with the privi-
5 lege of leaving the jail ~~—~~ during ~~such~~ THE hours ~~as~~ the
6 court determines, and under ~~such~~ THE supervision ~~as~~ the court
7 considers, necessary ~~—~~ for the purpose of allowing the payer to
8 go to and return from his or her place of employment or, if the
9 person wishes to seek employment, to seek employment.

10 (B) IF THE PAYER HOLDS A DRIVER'S LICENSE, CONDITIONING THE
11 CONTINUATION OF THE PAYER'S DRIVER'S LICENSE UPON COMPLIANCE WITH
12 AN ORDER FOR PAYMENT OF THE ARREARAGE IN 1 OR MORE SCHEDULED
13 INSTALLMENTS OF A SUM CERTAIN.

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

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

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

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

1 Sec. 44. (1) If the office of the friend of the court
2 determines THAT APPLICATION OF A MAKEUP VISITATION POLICY UNDER
3 SECTION 41(1)(A) IS UNSUCCESSFUL IN RESOLVING A VISITATION DIS-
4 PUTE OR that action should OTHERWISE be taken under section
5 41(1)(b), the office of the friend of the court shall commence a
6 civil contempt proceeding to resolve a dispute concerning visita-
7 tion of a minor child by filing with the circuit court a petition
8 for an order to show cause why either parent who has violated a
9 visitation order should not be held in contempt.

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

13 (a) Require additional terms and conditions consistent with
14 the court's visitation orders.

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

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

20 (d) Order the parent to pay a fine of not more than
21 \$100.00.

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

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

1 (G) IF THE PARENT HOLDS A DRIVER'S LICENSE, CONDITION THE
2 CONTINUATION OF THE PARENT'S DRIVER'S LICENSE UPON COMPLIANCE
3 WITH AN ORDER FOR MAKEUP AND ONGOING VISITATION.

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

10 (4) IF THE COURT ENTERS AN ORDER UNDER SUBSECTION (2)(G) AND
11 THE PARENT FAILS TO COMPLY WITH THE MAKEUP AND ONGOING VISITATION
12 SCHEDULE, THE COURT SHALL FIND THE PARENT IN CONTEMPT AND MAY
13 ORDER SUSPENSION OF THE PARENT'S DRIVER'S LICENSE AND PROCEED
14 UNDER SECTION 26B.

15 (5) AFTER ENTRY OF A SUSPENSION ORDER UNDER SUBSECTION (4),
16 A PARENT MAY AGREE TO A MAKEUP VISITATION SCHEDULE. THE COURT
17 MAY ORDER A MAKEUP VISITATION SCHEDULE IF THE PARENT DEMONSTRATES
18 A GOOD FAITH EFFORT TO COMPLY WITH THE VISITATION ORDER. IF THE
19 COURT ORDERS A MAKEUP VISITATION SCHEDULE, THE COURT SHALL ENTER
20 AN ORDER RESCINDING THE SUSPENSION ORDER THAT IS EFFECTIVE AS
21 PROVIDED IN SECTION 321C OF THE MICHIGAN VEHICLE CODE, ACT
22 NO. 300 OF THE PUBLIC ACTS OF 1949, BEING SECTION 257.321C OF THE
23 MICHIGAN COMPILED LAWS. WITHIN 7 BUSINESS DAYS AFTER ENTRY OF
24 THE ORDER RESCINDING THE SUSPENSION ORDER, THE OFFICE OF THE
25 FRIEND OF THE COURT SHALL SEND A COPY OF THE ORDER RESCINDING THE
26 SUSPENSION ORDER TO THE SECRETARY OF STATE.

1 Section 2. This amendatory act shall not take effect unless
2 Senate Bill No. _____ or House Bill No. 5389 (request
3 no. 02202'95 a **) of the 88th Legislature is enacted into law.