House
Legislative
Analysis
Section

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CHILD SUPPORT ARREARAGE ENFORCEMENTS

House Bill 6004 as enrolled
Public Act 565 of 2002
Sponsor: Rep. Jim Howell

House Bill 6012 as enrolled
Public Act 572 of 2002
Sponsor: Rep. Bruce Patterson

House Committee: Civil Law and the Judiciary
Senate Committee: Families, Mental Health, and Human Services

Third Analysis (10-4-02)

THE APPARENT PROBLEM:

Child support payments are ordered to ensure that the needs of children are adequately provided for even after the child's parents are no longer married. In many instances, child support payments represent a significant portion of a family's income. As such, child support payments contribute greatly toward the self-sufficiency of those families receiving support. Aside from the immediate financial benefits that child support payments provide families, the support payments also serve to foster a better relationship between noncustodial parents and their children.

In recognition of the importance of child support, the Friend of the Court and the Office of Child Support may employ several enforcement remedies pursuant to the Support and Parenting Time Enforcement Act to ensure the collections of current and past due child support. The enforcement remedies include contempt proceedings, license suspension, the attachment of liens, and collecting past due support through state and federal income tax refunds.

Under the current process for utilizing liens as an enforcement remedy, the Friend of the Court identifies, on an individual basis, cases in which the office will attach a lien. To enforce the lien, the Friend of the Court sends notices, conducts administrative reviews, and uses garnishments to obtain the payer's financial assets in accordance with judicial proceedings. Some believe that the current process with regard to liens attached to a payer's financial assets is cumbersome and labor intensive, and greatly inhibits the Friend of the Court's ability to effective utilize this enforcement remedy and provide support to children in need.

THE CONTENT OF THE BILLS:

House Bill 6004 would amend the Support and Parenting Time Enforcement Act (MCL 552.602 et al.), and would take effect on December 1, 2002. In addition, the bill is tie-barred to House Bill 6012.

Support Orders. The bill would require all support orders to be stated in monthly amounts payable on the first of each month in advance. A support obligation that is not paid by the last day of the month in which it accrues would be past due. If the amount were not stated as a monthly amount, it would be converted to a monthly amount using the formula established by the State Court Administrative Office.

Under the bill, if payments under a support order are being made in the required amount and there are no preexisting arrearages, the Friend of the Court would not consider the payer as having an arrearage if a periodic temporary arrearage is created due to the conversion of the monthly support order to an income withholding order or other payment schedule and that results from a difference between the payment cycle (through an income withholding or payment schedule) and the cycle of charges.

In addition, under the bill, if a support order took effect on a day other than the first day of the month, the monthly amount would be prorated based on the daily amount for that month. However, a monthly

support order would not be prorated for the last month in which the order is in effect.

Under the bill, if the state's Title IV-D agency [currently the Office of Child Support (OCS) within the Family Independence Agency] received a support payment that, at the time of its receipt, exceeded a payer's support amount plus an amount payable under an arrearage payment schedule, the IV-D agency would apply that excess amount against the payer's total arrearage accrued under all support orders under which that payer is obligated. If a balance remained, the IV-D agency would do one of the following:

- Immediately disburse that amount to the recipient if the payer designates that balance as additional support).

- Retain the balance and disburse it to the payee when the balance is payable as support if, at the time payment is received, the payer is obligated under a support order for a future support payment and the balance is less than or equal to the monthly support order amount.

- Return the balance to the payer if, at the time payment is received, the payer is not obligated for a future support payment, or the payer is obligated under a support order for a future support payment but the balance is greater than the monthly support order amount.

Liens. Under the act, any amount of support past due constitutes a lien against the payer's real and personal property, with certain exceptions. The bill would add that a lien against past due support would be subordinate to a prior perfected lien. In addition, before a lien was perfected, the IV-D agency would notify the payer of the imposition of the lien, and that his or her real property could be encumbered or seized if an arrearage accrues in an amount greater than the amount of periodic support payments. Furthermore, the IV-D agency or another person required to provide notice would provide the notification by paper, unless the person to be notified agreed to notification via another means. The IV-D agency or other person would complete and preserve proof of service in a manner similar to proof of service requirements under Michigan Court Rules.

Under the act, the Office of the Friend of the Court has the responsibility for imposing and perfecting a lien against child support arrearages. The bill would transfer this authority to the state's IV-D agency. Under the act, the Friend of the Court may perfect a lien on the real or personal property of a payer when the amount of the arrearage exceeds the amount of support payable for one year. The bill would allow the IV-D agency to perfect a lien when the arrearage exceeds two times the monthly amount of support. The IV-D agency would perfect a lien for an arrearage in the same manner in which another lien on similar property is perfected.

The bill would delete certain provisions pertaining to perfecting a lien in a case in which the support order was issued prior to August 10, 1998 (the effective date of the original section). The act requires the Friend of the Court to notify the payer when the lien has been perfected, and allows the payer 21 days after the date of the notification to request a review on the lien and proposed action. In addition, the Friend of the Court must schedule review within 14 days of the request. The bill would continue to allow the payer 21 days to request a review, but would require that the review be *conducted* within 14 days of the request.

Financial Assets. Under the bill, if a payer's financial assets held in a financial institution were subject to a lien and an arrearage had accrued that exceeded two times the monthly amount of support, the IV-D agency could levy a lien against the payer's financial assets held by a financial institution. To levy a lien against the financial assets, the IV-D agency would notify the institution of the lien and levy, and direct the institution to freeze the payer's financial assets held at that financial institution. The OCS would, in consultation with the State Court Administrative Office, develop the form for the notification. The notification would include the levy amount; information that allows the financial institution to connect the payer with his or her financial assets; any IV-D agency contact information; and statements that explain the rights and responsibilities of the payer and the financial institution. The IV-D agency could withdraw a levy any time before the circuit court considered or heard the matter in an action. The IV-D agency would notify the payer and the financial institution of the withdrawal, at which time the financial institution would release the payer's financial assets.

Financial Institution Obligations. The bill states that a financial institution would not incur any obligation or liability to a depositor, account holder, or other person because it furnished information relating to a lien, or because it failed to disclose to a depositor, account holder, or other person that the person's name as a person with an interest in the financial assets was included in the information provided. In

addition, the financial institution would not incur any obligation or liability to the IV-D agency or another person for an error or omission made in good faith.

Further, a financial institution would not incur any obligation or liability for freezing, blocking, placing a hold upon, forwarding, or otherwise dealing with a person's financial assets in response to a lien or levy imposed. In addition, a financial institution would not be obligated to block, freeze, place a hold upon, or forward a person's financial assets until it received notice of the levy.

Notification Received by the Financial Institution. When a financial institution received notice of a levy on a payer's financial assets, the institution would be required to freeze those assets. The financial institution would only freeze those assets up to the amount of the levy. If the financial institution received the notice before noon, the freeze would be executed the first business day after the business day on which the notice was received. If the notice were received at noon or later, the freeze would be executed on the second business day after the business day on which the notice was received. After the freeze was executed, the financial institution would notify the payer, the IV-D agency, and each person with an interest in the financial assets. The financial institution would include a copy of the IV-D agency notice in its notice to the payer.

Challenges to the levy. A payer whose financial assets were levied, or a person with an interest in the assets, could challenge the levy by submitting a written challenge to the IV-D agency within 21 days after the financial institution sends the payer a copy of the IV-D agency notice. The challenge would be governed by the provisions of the act, and would not be subject to the Administrative Procedures Act of 1969 (Public Act 306 of 1969).

If the IV-D agency received a written challenge within the time required, the agency would notify the financial institution of the challenge and, within seven days, review the case with the challenger. The IV-D agency would only consider a mistake in the payer's identity, the amount of support past due, or another mistake of fact. If the agency determined that a mistake had indeed occurred, it would have to do one of the following:

• If there were a mistake in the payers identity or the payer did not owe past due support in an amount equal to or greater than the monthly amount of support, the agency would have to notify the financial institution and the payer that the levy was released.

• If the payer did owe past due support equal to or greater than the monthly amount, but the amount in the notice is more than the payer owes, the agency would notify the payer of the corrected amount.

• If there were a mistake in fact other than those listed above, the agency would have to take any appropriate action.

If the payer, or interested person, disagreed with the agency's review determination, he or she could file an action in the circuit court that issued the original support order. The payer, or interested person, would have to file the action within 21 days after the agency send notice of its determination. In addition, the payer, or interested person, would have to notify the IV-D agency of the action. If an action were not filed within the required time, the IV-D agency would notify the financial institution and direct it to act in accordance with the agency's review determination. If the act were filed within the required time, the agency would notify the financial institution and direct it to act in accordance with the court's decision.

Financial Institution Responsibilities. A financial institution that received notice of a levy would forward money in the amount past due as stated in the notice (or the corrected amount) to the State Disbursement Unit (SDU) and any information necessary to identify the payer. Money would be forwarded not before the next day and not after the seventh day after one of the following takes place:

• The financial institution notifies the payer and the IV-D agency that the payer's financial assets are frozen and has yet to receive, within 28 days after the financial institution sent the notices, a notice from the IV-D agency that the payer or another person with in interest in the financial assets has challenged the levy.

• The financial institution receives, within the time limit required, a notice from the IV-D agency that the payer or another person with an interest in the financial assets has challenged the levy and receives another notice from the agency directing the financial institution to act in accordance with either the agency's review determination or the court's decision.

If the financial institution would be required to convert one or more financial assets to cash, in order to forward sufficient funds to the SDU, the institution would convert the assets and assess any resulting fees, costs, or penalties against the payer. If the

payer did not have sufficient assets to pay the amount past due and any additional fees and other costs, the financial institution could deduct the fees, costs, and penalties and forward to remaining balance to the SDU.

Circuit Court Proceeding. If an action was filed with the circuit court within the required time limit, the circuit court would review the matter de novo (anew; a second time). The court's review would not be limited to mistakes of fact. The court would only address the appropriateness of the levy, and whether the levy amount is correct. The circuit court would not consider any evidence that is related to custody, parenting time, or the amount of the support order, and any other information that is not related to the levy against a payer's financial assets. Furthermore, the circuit court could not modify a support order. The bill specifies that a court finding regarding a monthly or past due support amount would not modify the underlying support order.

Disbursement of Funds. If, after a financial institution forwarded money to the SDU, all of the money was returned to the payer because of a mistake of fact or court order, the IV-D agency would reimburse the payer for any fees, costs, or penalties that were assessed by the financial institution. In addition, the Title IV-D agency would compensate the payer for the amount of interest that the financial assets would have earned had they not been converted and forwarded to the SDU, to the extent that the interest can be determined with a reasonable degree of certainty.

Furthermore, if the amount of the past due support the payer owed under all support orders subject to levy was more than the amount a financial institution forwarded to the SDU, the SDU would allocate the money on a proportional basis to all support orders subject to the levy.

License Suspension. Under the act, the Friend of the Court may petition the court to suspend a payer's occupational, driver's, recreational, or sporting license if the arrearage is greater than the amount payable for six months. The bill would allow license suspension, for a Friend of the Court case, if the arrearage were greater than the amount payable for two months of support. [Note: House Bill 6011 would allow parties to opt-out of the Friend of the Court system. If parties chose to opt-out, the Friend of the Court would not be required to enforce support orders. In this instance, the Friend of the Court would not be required to petition the court to suspend a delinquent payer's license.]

House Bill 6012 would amend several provisions of the Support and Parenting Time Enforcement Act (MCL 552.602 et al.) relating to the duties of the Friend of the Court. This bill is tie-barred to House Bill 6004 and would take effect on December 1, 2002. The bill specifies that several provisions would apply "for a Friend of a Court case". (This would recognize that, under the opt-out provisions of House Bill 6011, the Friend of the Court office would no longer be responsible for the administration and enforcement of any obligations imposed on a domestic relations matter for cases in which the parties have opted out.)

Under the act, on January 1 and July 1 of each year, a surcharge of 8 percent annually is added to any support payments that are past due as of those dates. The surcharge is assessed on an amount equal to the total support past due less an amount equal to the amount of support payable for two weeks. The bill would amend this provision so that the surcharge would be assessed on an amount equal to the total support past due less an amount equal to the amount of support payable for one month.

In addition, under the act, individuals are generally accorded 14 days to respond to notices, submit objections, and request hearings. The bill would increase the time to 21 days.

BACKGROUND INFORMATION:

Related Legislation. The bill is part of a larger package of bills proposed by Governor John Engler and state Supreme Court Chief Justice Maura Corrigan that is designed to clarify and strengthen existing law, and centralize and streamline procedures taken to enforce orders, both of which are intended to better enable the local Friend of the Court Offices to refocus their resources, improve service, and increase child support collections. [See House Bills 6004-6012, 6017, and 6020.]

Liens. Generally speaking, a lien is the right of a person who is owed money to claim an interest in the property of the person who owes him or her money. Property with a lien attached to it may be sold in order to pay that debt. This may make it difficult to sell the property, as any financial obligations to that property would have to be satisfied. As such, attaching a lien to property will not necessarily result in payment of support. In addition, if a lien were attached to a person's financial assets (such as a bank account), the obligor may be prohibited from using that property.

A lien notifies a person who may want to receive property from a person who owes money that another person has a claim on that property. When other persons or entities hold property for someone who owes money and they receive proper notice that a lien exists, they know that they should not transfer the property to another without release of the lien. Giving this notice is often called "perfecting" the lien. The Friend of the Court can only perfect a lien if the payer has an arrearage equal to the amount of support payable for one year. However, the Friend of the Court is not required to perfect a lien. The office may determine that the property value is too small, or that other enforcement tools will also effectively collect the support arrearage.

Liens can affect several different types of property, which control how the lien must be perfected. The Friend of the Court notifies the agency that is responsible for registering liens on that particular type of property. For instance, if a lien were placed against a payer's house, the Friend of the Court would notify the register of deeds in the appropriate county. If a lien were placed against a payer's car, the Friend of the Court would notify the secretary of state. Of course, before the Friend of the Court can perfect a lien, it has to have the information necessary to identify the property, such as an automobile's Vehicle Identification Number (VIN).

The use of liens as a child support enforcement mechanism is required under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 U.S.C. 666). Under federal law, the state is required enact procedures under which liens arise by operation of law against real and personal property for amount of overdue support owed by a noncustodial parent who resides or owns property in the state. In addition, the state must accord full faith and credit to liens arising in other states, when the state agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the state, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien. Provisions in the Support and Parenting Time Enforcement Act relating to liens were enacted with Public Act 334 of 1998.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

House Bill 6004 would strengthen the procedures for using liens and license suspensions as enforcement mechanisms. Under current law, the Friend of the Court is allowed to perfect a lien on real or personal property when the amount of the child support arrearage exceeds the amount of support payable for one year. In addition, the Friend of the Court may petition the court to suspend the payer's occupational, driver's, and recreational and sporting licenses when the arrearage exceeds the amount of support payable for six months. The bill would lower the threshold when these enforcement mechanisms would be invoked. The bill would allow the state's IV-D agency (the Office of Child Support) to perfect a lien when the amount of the arrearage equals the amount payable for two months of support. In addition, the bill would allow the Friend of the Court to petition for license suspension when that arrearage is equal to the amount payable for two months.

Standardizing the enforcement threshold at two months would allow the Friend of the Court to utilize whichever enforcement mechanism it deems appropriate for a particular case. For instance, if the Friend of the Court were unable to petition the court to suspend a payer's license, or if it were to determine that license suspension would be inappropriate, the office would have to wait six months (assuming the amount of the arrearage had not been paid down) until it would be able to attach a lien to a payer's property. During that six months, the arrearage continues to accrue. That is money required to be paid as child support, which does not reach a child in need.

Not only does the bill standardize the threshold for invoking certain enforcement remedies, the bill also lowers the threshold to only two months. Lowering the threshold would benefit everyone involved in a child support order. The two-month threshold allows enforcement tools to be utilized quickly before the amount of the arrearage becomes burdensome.

For most payers, an arrearage equal to two months of support is a manageable amount. As such, he or she is more likely to pay the arrearage than be subject to any of the enforcement mechanisms. It is believed by some, that some payers accrue an arrearage for five months and then pay the arrearage, because the payer knows that his or her license could be suspended when the arrearage equal six months of support. The

two-month threshold would encourage the payer to stay up to date with his or her support payments.

Children for whom support has been ordered will most certainly benefit from a two-month threshold. For those families receiving child support, those payments represent a significant portion of their yearly income. When the arrearage is allowed to accrue for several months before any enforcement actions are taken, those families with children for whom support has been ordered are adversely affected. The two-month threshold allows officials to take appropriate action quickly, which ensures that children for whom support has been order will receive the support due to them in a timely manner.

Against:

Notwithstanding the adverse affects a child support arrearage can have on a child, the two-month threshold for the enforcement proceedings is too strict, and certainly not practical. While House Bill 6004 attempts to crack down on those who purposefully fail to meet their financial obligations by allowing for enforcement procedures at an arrearage of two months, the bill will adversely impact those payers who make payments in good faith. In many instances, an arrearage accrues through no fault of the payer. Many problems stem from the state's child support enforcement computer system (CSES) or from the Friend of the Court offices themselves. At a minimum, the threshold to begin enforcement proceedings should be when the arrearage is equal to the amount of support payable for three months. At that point, any overdue payments due to the problems with the Friend of the Court or the CSES should be transmitted to the proper party.

Against:

Among other changes to the Friend of the Court, the package of bills reforming the Friend of the Court seeks to streamline the administrative processes used to enforcement parenting time and support orders. With more than $6 billion in past due support owed to the children of the state, many believe that current processes do not allow the Friend of the Court to pro-actively enforce child support and parenting time orders.

One method to streamline enforcement and improve collections is to compress the time requirements allowed for individuals to respond to notices and actions. As introduced, the House Bill 6004 would have shortened the time requirements for a response, generally 21 days, to 14 days. However, as amended on the floor of the House, the bill would retain the 21-day requirement to respond to notices and actions. In addition, there are several other provisions in the act that require 14 days in order to take effect or must be executed within 14 days. House Bill 6012 would, generally, increase the 14-day period to 21 days.

Part of the problem the package seeks to address is the length of time needed to process cases. When this process gets dragged out for longer and longer periods of time, children continue to go without the required support. Compressing the time requirements to 14 days, as was proposed initially in House Bill 6004, or found in current law, would help to resolve matters more quickly, thereby ensuring that children receive their ordered support.

Response:

The shortened time requirements, as provided for in previous versions of House Bill 6004, fail to provide payers with adequate due process. Reducing the time required of the payer, to either pay the arrearage or request a hearing, to 14 days does not afford the payer an adequate amount of time to obtain the required funds to pay the arrearage, nor does it enable to payer to obtain the information necessary to sufficiently protest the action. In addition, increasing the time to 21 days for several of the provisions and retaining the 21 day requirement found in other provisions creates a more uniform enforcement process and removes any confusion that may arise when applying certain enforcement remedies and sending notifications.

For:

House Bill 6004 would clarify the procedures used to attach a lien on a delinquent payer's financial assets when collecting past due child support. Under the Support and Parenting Time Enforcement Act, liens against the financial assets of a delinquent payer are enforced in the same manner provided by law for levying against an account at a financial institution. Under current law, this procedure follows garnishment proceedings under the Revised Judicature Act of 1961 and Michigan Court Rules. The bill would place explicit procedures in the Support and Parenting Time Enforcement Act for enforcing liens against the financial assets of a delinquent payer. The provisions of the bill clearly set out the duties and responsibilities of the state's IV-D agency, financial institutions, courts, and parties involved in the matter.

For:

House Bill 6004 shifts the responsibility for attaching liens from local Friend of the Court offices to one

single statewide office (the IV-D agency). Centralizing the authority to attach liens as an enforcement remedy provides for a more uniform application of attaching liens, streamlines the enforcement procedures, and frees up the time and resources of local Friend of the Court offices.

For:

House Bill 6012 reduces the surcharges assessed a delinquent payer. In many situations, chronically delinquent support payments become essentially not payable and rather burdensome and serve to actually discourage individuals from paying child support as surcharges are continually assessed on past due amounts. Lowering the assessment surcharge, then, is a necessary means to facilitate the collection of child support arrearages.

Response:

Lowering the surcharges assessed on past due support payments will actually hinder the collection of past due support. Rather, the surcharges effectively deter payers from not paying the support payments on time or in the required amount.

Analyst: M. Wolf

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.