CONFIDENTIALITY OF WORKERS COMP RECORDS; EXEMPT FOR SUPPORT ORDERS

House Bill 6005 with committee amendments
First Analysis (5-23-02)

Sponsor: Rep. Clark Bisbee
Committee: Civil Law and the Judiciary

THE APPARENT PROBLEM:

The Friend of the Court Act of 1982 and the Federal Child Support Enforcement Amendments of 1984 require the Friend of the Court Bureau to develop a formula to be used in establishing and modifying the amount of child support ordered. The formula is developed based on the needs of the child and the resources of each parent. The formula identifies common factors among support cases to ensure greater uniformity and predictability among support orders. Any support recommendations issued by the Friend of the Court must follow the formula. In addition, circuit court judges are required to follow the formula when setting the amount of support. A judge may, however, deviate from the formula if he or she states in writing the reasons for not following the formula.

In determining a person's net income, the formula takes into consideration, among other sources, earnings and wages, unemployment compensation, and worker's compensation. In addition, as an enforcement remedy if a noncustodial parent owes past due child support, the Office of Child Support may take periodic or lump sum payments the noncustodial parent receives from state or local agencies, including, among others, worker's compensation benefits.

However, under current law, the Worker's Compensation Board is not required to release the information necessary to accurately determine the amount of worker's compensation used in calculating a person's net income under the child support formula or in the enforcement of paying child support arrearages. As part of a package of legislation proposed to improve child support collection, legislation has been introduced that would allow for such information to be released.

THE CONTENT OF THE BILL:

Under the Worker's Disability Compensation Act of 1969 (Public Act 317 of 1969), certain records and information are confidential and exempt from disclosure under the Freedom of Information Act (Public Act 442 of 1976). The act does, however, allow such information to be disclosed under certain circumstances.

The bill would require the Bureau of Worker's Compensation within the Department of Consumer and Industry Services to release information to the state's IV-D agency (which is currently the Office of Child Support within the Family Independence Agency) for use in the establishment and enforcement of support orders pursuant to the Support and Parenting Time Enforcement Act (Public 295 of 1982).

The bill would take effect on June 1, 2003.

MCL 418.230

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state or on local units of government. (5-22-02)

ARGUMENTS:

For:
The bill would close an apparent loophole in current law, thereby ensuring equitable treatment of the parties involved, and improving the ability of the Friend of the Court and the Office of Child Support to properly apply any worker's compensation benefits toward child support.

The Friend of the Court uses a person's worker's compensation benefits in determining a person's income. In some cases, worker's compensation

benefits can be a significant portion of a person's income. As a result, if the Friend of the Court or the Office of Child support cannot receive the needed information from the Worker's Compensation Bureau, the amount of support ordered for a child will be greatly affected. If any worker's compensation benefits received by the custodial parent go unreported, the resulting amount of support ordered to be paid by the noncustodial parent will likely increase. While the child may receive a greater amount of overall support from both parents, this places an undue hardship on the noncustodial parent. The amount of support ordered would be inflated, and could potentially result in an arrearage if the amount ordered becomes so burdensome on the payer, that he or she fails to keep up with the required payments. Likewise, if any worker's compensation benefits received by noncustodial parent go unreported, the resulting amount of support ordered to be paid will likely decrease. As a result, the noncustodial parent's support obligation would be artificially low, and would not adequately meet the needs of the child or children involved.

Furthermore, the Office of Child Support Act (Public Act 174 of 1971) requires, upon the request of the office or the IV-D agency of another state, a governmental entity to provide any record or information to the office. These records include, among others, information on the current employment, compensation, and benefits of the individual employed as an employee or an independent contractor and a worker's compensation record. The act allows the office to issue an administrative subpoena to require an entity to furnish the required information or records. If the information or records are subpoened, they must be provided within 15 days. The act states that subpoena power of the office does not abrogate a confidentiality privilege established by law. However, since the worker's compensation records are confidential under the Worker's Disability Compensation Act of 1969, the Worker's Compensation Bureau is not required to provide records to the Office of Child Support. The bill would square the two acts, and allow for the disclosure of such records to the office.

POSITIONS:

The Family Independence Agency supports the bill. (5-22-02)

The Friend of the Court Association supports the concept of the bill. (5-22-02)

The Association for Children for Enforcement of Support supports the bill. (5-22-02)

Dads of Michigan is neutral on the bill. (5-22-02)

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.