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SFA BILL ANALYSIS

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Senate Bill 317 (Substitute S-3 as reported)
Senate Bill 318 (Substitute S-2 as reported)
Senate Bill 319 (Substitute S-1 as reported)
Senate Bill 320 (Substitute S-1 as reported)
Senate Bill 321 (Substitute S-1 as reported)
Senate Bill 322 (Substitute S-1 as reported)
Sponsor: Senator Bev Hammerstrom (Senate Bills 317, 318, & 319)
Senator Shirley Johnson (Senate Bills 320, 321, & 322)
Committee: Families, Mental Health and Human Services

Date Completed: 4-17-01

RATIONALE

Several Michigan statutes specify procedures for determining and enforcing court-ordered child support payments and the provision of health care coverage in relation to child support orders. The child support system can be complicated for parents and their legal representatives, and having the support provisions in several different statutes may contribute to the confusion. Also, since these provisions are essentially identical, it is necessary to amend each of the statutes whenever the procedures or requirements related to them are revised, in order to maintain consistency within the support system. Some people feel that, for purposes of streamlining the child support enforcement system for those who use it and for legislative efficiency, the child support provisions should be consolidated into one statute, to which other laws would refer as necessary.

Also, recent changes in Federal law require states to enact laws that provide for the use of a National Medical Support Notice for the enforcement of child support orders that include a provision for health care coverage (described below in BACKGROUND). According to the Federal law, within certain time frames, when a noncustodial parent is required to provide health insurance for his or her child, the state child support agency must use the notice to inform the parent's employer, who then must transfer the notice to the appropriate health care plan. The Federal law requires states to begin complying by October 1, 2001.

In addition, Michigan's laws regulating marriage and divorce date back as far as 1846. Some of these provisions refer to mentally disabled people in terms that many consider derogatory, discriminatory, and outdated. It has been suggested that this language should be replaced with references to a person's legal inability to enter into a contract.

CONTENT

Senate Bill 317 (S-3) would amend the Support and Parenting Time Enforcement Act to incorporate in that Act child support order provisions that would be deleted and repealed from several other statutes by Senate Bills 318 (S-2) through 322 (S-1). The bill also specifies that, even if another Michigan statute provided that the Support and Parenting Time Enforcement Act applied to support orders issued under that other law, if the other law contained a specific provision regarding the contents or enforcement of the support order that conflicted with the Support and Parenting Time Enforcement Act, the other law would control in regard to that provision. In addition, the bill would require that an order or notice for dependent health care coverage comply with standards of the National Medical Support Notice.

Senate Bills 318 (S-2) through 322 (S-1) would amend various statutes to delete

child support order provisions that would be included in the Support and Parenting Time Enforcement Act under Senate Bill 317 (S-3). The bills would repeal a section in each of those statutes that provides for support orders for children who are not minors, under certain circumstances. The bills, instead, would refer to the child support order provisions codified in the Support and Parenting Time Enforcement Act. Each bill also specifies that if the statute it would amend contained a specific provision regarding the contents or enforcement of a support order that conflicted with a provision in the Support and Parenting Time Enforcement Act, the other statute would control in regard to that provision.

Senate Bill 318 (S-2) also would replace provisions referring to the marriage of a person who was "insane", an "idiot", or a "lunatic", with provisions referring to the marriage of a person who was not capable in law of contracting at the time of marriage.

Senate Bill 318 (S-2) would amend Chapter 84 of the Revised Statutes of 1846, which regulates divorce; Senate Bill 319 (S-1) would amend the Child Custody Act; Senate Bill 320 (S-1) would amend the Paternity Act; Senate Bill 321 (S-1) would amend the emancipation of minors law; and Senate Bill 322 (S-1) would amend the Family Support Act.

Senate Bill 317 (S-3) is tie-barred to Senate Bills 318 through 322, which are tie-barred to Senate Bill 317. The bills would take effect on September 30, 2001.

Consolidation

Under the provisions that would be consolidated in the Support and Parenting Time Enforcement Act and deleted from other laws, a court must order child support in an amount determined by application of the child support formula developed by the State Friend of the Court (FOC) Bureau as required in the FOC Act (MCL 552.519). The court may enter an order that deviates from the formula if it determines from the facts of a case that application of the formula would be unjust or inappropriate and the court sets forth in writing or on the record all of the following:

-- The child support amount determined by application of the child support formula.
-- How the child support order deviates from the formula.
-- The value of property or other support awarded in lieu of the payment of child support, if applicable.
-- The reasons why application of the child support formula would be unjust or inappropriate in the case.

These provisions do not prohibit the court from entering a child support order that is agreed to by the parties and that deviates from the child support formula, if the requirements for deviating from the formula are met.

A child support order entered or modified by the court must require that each party keep the FOC office informed of the name and address of his or her current source of income, as well as any health care coverage that is available as a benefit of employment or that is maintained by the party; the name of the insurance company, nonprofit health care corporation, or health maintenance organization; the policy, certificate, or contract number; and the names and birth dates of the people for whose benefit he or she maintains health care coverage under the policy, certificate, or contract.

If a child support order is entered, the court must require that one or both parents obtain or maintain health care coverage that is available to them at a reasonable cost, as a benefit of employment, for the benefit of the minor children of the parties, and for the benefit of the parties' children who are not minors, if applicable. If a parent is self-employed and maintains health care coverage, the court must require the parent to obtain or maintain dependent coverage for the benefit of the parties' minor children and for the benefit of the parties' children who are not minors, if applicable, if that coverage is available at a reasonable cost.

A court may require either parent to file a bond with one or more sufficient sureties, in a sum to be fixed by the court, guaranteeing payment of child support.

A court that orders child support may order support for a child after the he or she reaches 18 years of age, under certain conditions. The

court may order child support for the time a child is regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full-time basis with the recipient of support or at an institution, but in no case after the child reaches 19 years and six months of age. A complaint or motion requesting such support may be filed at any time before the child reaches 19 years and six months of age.

Dependent Health Care Coverage

Senate Bill 317 (S-3) would require that every support order include notice that an order for dependent health care coverage would take effect immediately and be sent to the parent's current and subsequent employers and insurers, if appropriate. The notice would have to inform the parent that he or she could contest the action by requesting a review concerning availability of health care coverage at a reasonable cost.

Under the bill, within two business days after either a new hire report was entered into the state directory of new hires created under Part D of Title IV of the Federal Social Security Act, or a payer's or parent's employer was otherwise identified, the FOC office, when appropriate, would have to give the new employer a notice of income withholding or of an order for dependent health care coverage, or both, on behalf of a payer who was subject to income withholding or a parent or payer who was required to provide dependent health care coverage. If an order for dependent health care coverage were entered before the bill's effective date, the FOC office, at the time notice was sent to the employer pursuant to the bill, would have to give the payer or parent instructions on how to request a review or hearing to contest the availability of dependent health care coverage at a reasonable cost.

The Support and Parenting Time Enforcement Act provides that, under certain conditions, if a parent is eligible for health care coverage through an employer doing business in Michigan, the employer must notify its insurer or plan administrator and take other action required to enroll that parent's child in its health care coverage plan. The bill would require that action to be taken within 20 business days after the date of an order or notice of an order for dependent health care coverage.

Under the Act, if a parent fails to obtain or maintain health care coverage for a child as ordered by a court, the FOC office must either petition the court for an order to show cause why the parent should not be held in contempt or send a notice of noncompliance to the parent. Under the bill, if the FOC office sent a notice of noncompliance, it also would have to schedule a review or hearing to determine the availability of dependent health care coverage at a reasonable cost.

The Act requires that an order for dependent health care coverage include information required under the Federal Employee Retirement Income Security Act (ERISA), if the health care coverage plan of the individual who is responsible for providing a child with health care coverage is subject to ERISA. The bill would further require that an order or notice for dependent health care coverage comply with standards of the National Medical Support Notice as required to meet Federal law and regulations.

Contracting Marriage

Under Chapter 84 of the Revised Statutes of 1846, a marriage solemnized in Michigan when either party was "insane" or "an idiot" is void. Senate Bill 318 (S-2) specifies instead that a marriage solemnized in Michigan would be void if the marriage were prohibited by law because either party was not capable in law of contracting at the time of solemnization.

Chapter 84 also provides that, upon the dissolution of a marriage "on account of...insanity or idiocy of either party", the children of the marriage are considered legitimate. The bill would delete reference to a party's insanity or idiocy and refer, instead, to a party who was otherwise not capable in law of contracting at the time of the marriage.

Chapter 84 provides that a bill to annul a marriage on grounds of "insanity" or "idiocy" may be exhibited by any person admitted by the court to prosecute as the next friend of the "idiot" or "lunatic". The Senate bill specifies, instead, that if, at the time of a marriage, a party to the marriage were not capable in law of contracting, an individual admitted by the court as the party's next friend could bring an action to annul the marriage.

In addition, Chapter 84 provides that the marriage of a "lunatic" may be declared void, upon his or her application, after the restoration of reason, but nullity may not be pronounced if it appears that the parties freely cohabited as husband and wife after the "lunatic" was restored to sound mind. The bill specifies, instead, that a party to a marriage who, at the time of the marriage, was not capable in law of contracting and who later became capable in law of contracting could bring an action to annul the marriage. The court could not annul the marriage, however, if it found that the parties cohabited as husband and wife after the party became capable of contracting.

MCL 552.603 et al. (S.B. 317)
552.1 et al. (S.B. 318)
722.27 (S.B. 319)
722.717 et al. (S.B. 320)
722.3 (S.B. 321)
552.452 (S.B. 322)

BACKGROUND

Public Law 105-200 enacted the Child Support Performance and Incentives Act of 1998 to require the promulgation and use of a National Medical Support Notice (NMSN). The Act required the Secretary of Health and Human Services and the Secretary of Labor to develop and promulgate an NMSN to be issued by states as a means of enforcing the health care coverage provisions in a child support order. The NMSN is required to inform an employer of the following:

-- Applicable provisions of state law requiring the employer to withhold any employee contributions due under any group health plan in connection with coverage required to be provided under the order.
-- The duration of the withholding requirement.
-- The applicability of limitations on any such withholding under the Consumer Credit Protection Act.
-- The applicability of any prioritization required under state law between amounts to be withheld for purposes of cash support and amounts to be withheld for purposes of medical support, in cases in which available funds are insufficient for full withholding for both purposes.
-- The name and telephone number of the appropriate unit or division to contact at the state agency regarding the NMSN.

On December 27, 2000, the U.S. Department of Health and Human Services promulgated the final rule implementing the Child Support Performance and Incentives Act (65 FR 82154). According to the regulation (45 CFR 303.32), a state must have in effect and use procedures under which:

1) The state child support agency must use the NMSN to transfer notice of the provision for health care coverage of the child(ren) to employers.
2) The state agency must transfer the NMSN to the employer within two business days after the date an employee is entered in the "State Directory of New Hires".
3) Employers must transfer the NMSN to the appropriate group health plan providing any such health care coverage for which the child is eligible within 20 business days after the date of the notice.
4) Employers must withhold any obligation of the employee for employee contribution necessary for coverage of the child and send any amount withheld directly to the plan.
5) Employees may contest the withholding based on a mistake of fact.
6) Employers must notify the state agency promptly whenever the noncustodial parent's employment is terminated, in the same manner as required for income withholding cases.
7) The state agency must promptly notify the employer when there is no longer in effect a current order for medical support for which the agency is responsible.
8) The state agency, in consultation with the custodial parent, must promptly select from available plan options when the plan administrator reports that there is more than one option available under the plan.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Consolidating the child support provisions in one statute would improve legislative efficiency and make Michigan's child support system less confusing and difficult to negotiate. The bills' consolidation provisions would not change the substance of current law, but would streamline the system and make it more user-friendly.

Supporting Argument

Senate Bill 317 (S-3) would ensure that Michigan complied with the Federal mandate for the use of a National Medical Support Notice. Although the State's laws already contain many of the provisions required by the Federal regulation, the bill would add the prescribed deadlines, provide for the opportunity to contest the availability of affordable dependent health care coverage, and require an order for dependent health care coverage to comply with the NMSN. The bill would include these Federally mandated provisions in the Support and Parenting Time Enforcement Act effective September 30, 2001, thereby meeting the Federal deadline for state compliance. Failure to meet that deadline could result in Michigan's loss of Federal funds for child support enforcement.

Supporting Argument

Chapter 84 of the Revised Statutes of 1846 contains obsolete and offensive language referring to people who do not have the legal capacity to enter into a marriage contract. Rather than using terms such as "idiot" and "lunatic", Michigan's laws governing marriage and divorce should refer to a person's capability in law to enter into a contract. Senate Bill 318 (S-2) would make those changes, continuing legal protection from exploitation for those who do not have the emotional or mental capacity necessary to consent to marriage but without using outdated and insulting labels.

Legislative Analyst: P. Affholter
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FISCAL IMPACT

Senate Bill 317 (S-3) could result in additional administrative costs (due to notice provisions and additional hearings) to local units of government. According to the Family Independence Agency, the changes to implement the National Medical Support Notice are necessary to avoid the loss of Federal funds.

Fiscal Analyst: B. Bowerman

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