

HOUSE BILL No. 6555

December 3, 2002, Introduced by Rep. Vander Veen and referred to the Committee on Family and Children Services.

A bill to amend 1982 PA 295, entitled
"Support and parenting time enforcement act,"
by amending sections 7, 13, 27, and 35 (MCL 552.607, 552.613,
552.627, and 552.635), section 7 as amended by 2002 PA 572, sec-
tion 13 as amended by 1998 PA 334, section 27 as amended by 2001
PA 106, and section 35 as amended by 2002 PA 567.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) For a friend of the court case, if INCOME WITH-
2 HOLDING IS NOT IMMEDIATELY EFFECTIVE AND the arrearage under a
3 support order reaches the arrearage amount that requires the ini-
4 tiation of 1 or more support enforcement measures as provided in
5 section 11 of the friend of the court act, MCL 552.511, OR, IF
6 THE AMOUNT OF INCOME WITHHOLDING IS ADMINISTRATIVELY ADJUSTED FOR
7 ARREARS UNDER SECTION 17E OF THE FRIEND OF THE COURT ACT, MCL
8 552.517E, the office of the friend of the court immediately shall

1 send notice of the arrearage to the payer by ordinary mail to his
2 or her last known address. The notice to the payer shall contain
3 the following information:

4 (a) The amount of the arrearage.

5 (b) ONE OR BOTH OF THE FOLLOWING:

6 (i) That the payer's income is subject to income withholding
7 and the amount to be withheld.

8 (ii) THAT THE PAYER'S INCOME WITHHOLDING IS BEING ADMINIS-
9 TRATIVELY ADJUSTED AND THE AMOUNT OF THE ADJUSTMENT.

10 (c) That income withholding will be applied to current and
11 subsequent employers and periods of employment and other sources
12 of income.

13 (d) That the order of income withholding is effective and
14 notice to withhold income will be sent to the payer's source of
15 income.

16 (e) That the payer may request a hearing UNDER
17 SUBSECTION (4) IN WRITING within 21 days after the date of the
18 notice to contest the withholding, but only on the grounds that
19 the withholding is not proper because of a mistake of fact con-
20 cerning the amount of current or overdue support or the identity
21 of the payer, AND IF THE NOTICE INCLUDES AN ADMINISTRATIVE
22 ADJUSTMENT OF ARREARS, THAT THE ADMINISTRATIVE ADJUSTMENT WILL
23 CAUSE AN UNJUST OR INAPPROPRIATE RESULT.

24 (f) ~~That if the hearing is held before a referee, the payer~~
25 ~~has a right to a de novo hearing before a circuit court judge.~~

26 THE PLACE WHERE A REQUEST FOR HEARING UNDER SUBSECTION (4) SHALL
27 BE FILED.

1 (g) That if the payer believes that the amount of support
2 should be modified due to a change in circumstances, the payer
3 may file a petition with the court for modification of the sup-
4 port order.

5 (2) A copy of the notice provided for in subsection (1)
6 shall be sent by ordinary mail to each recipient of support.

7 (3) A payer to whom notice is sent under subsection (1),
8 within 21 days after the date on which the notice was sent, may
9 request a hearing BY FILING A REQUEST FOR HEARING AS PROVIDED IN
10 THE NOTICE AND SERVING A COPY ON THE OTHER PARTY. A HEARING CON-
11 CERNING IMPLEMENTATION OF INCOME WITHHOLDING THAT WAS NOT PREVI-
12 OUSLY EFFECTIVE MAY BE REQUESTED ONLY on the grounds that the
13 withholding is not proper because of a mistake of fact concerning
14 the amount of current or overdue support or the identity of the
15 payer.

16 (4) ~~A~~ IF A PAYER REQUESTS A HEARING UNDER SUBSECTION (3),
17 THE NOTICE AND REQUEST SHALL BE FILED WITH THE COURT CLERK AS A
18 MOTION CONTESTING THE PROPOSED ACTION AND A referee or circuit
19 judge shall hold a hearing ~~requested under this section~~ within
20 14 days after the date of the request. If at the hearing the
21 payer establishes that the withholding is not proper because of a
22 mistake of fact concerning the amount of current or overdue sup-
23 port or the identity of the payer, ~~the referee or circuit judge~~
24 ~~may direct that the order of income withholding be rescinded~~
25 ~~until such time as the referee or judge determines~~ OR THAT
26 IMPLEMENTATION OF AN ADMINISTRATIVE ADJUSTMENT OF THE AMOUNT OF

1 ARREARS TO BE WITHHELD WILL CAUSE AN UNJUST OR INAPPROPRIATE
2 RESULT, THE INCOME WITHHOLDING SHALL BE MODIFIED OR RESCINDED.

3 (5) If the hearing provided under subsection (4) is held
4 before a referee, either party may request a de novo hearing as
5 provided in section 7 of the friend of the court act,
6 MCL 552.507.

7 (6) If a petition for modification of the support order is
8 filed by or on behalf of a payer and is pending at the date
9 scheduled for a hearing under subsection (4), the court may con-
10 solidate the hearing under subsection (4) and a hearing on the
11 petition for modification.

12 (7) All proceedings under this section shall be completed
13 within 45 days after the date that notice was sent under subsec-
14 tion (1), unless otherwise permitted by the court upon a showing
15 of good cause.

16 Sec. 13. The court may find a source of income in contempt,
17 REQUIRE THE SOURCE OF INCOME TO PAY AN AMOUNT PURSUANT TO SECTION
18 11A(2) IF THE TERMS OF THAT SECTION HAVE BEEN SATISFIED, and fine
19 the source of income if the source of income is served with a
20 notice of income withholding and fails to comply with the notice
21 or to pay withheld amounts to the friend of the court after the
22 order becomes binding under section 11. THE IV-D AGENCY IS
23 RESPONSIBLE FOR INITIATING CONTEMPT PROCEEDINGS UNDER THIS
24 SECTION. CONTEMPT PROCEEDINGS UNDER THIS SECTION MAY BE INITI-
25 ATED IN ANY COUNTY WITH JURISDICTION OVER THE SOURCE OF INCOME.

1 Sec. 27. (1) ~~The~~ PURSUANT TO COURT RULES, THE circuit
2 court may take other enforcement action under applicable laws,
3 including, but not limited to, the following:

4 (a) 1846 RS 84, MCL 552.1 to 552.45.

5 (b) 1913 PA 379, MCL 552.151 to ~~552.155~~ 552.156.

6 (c) The family support act, 1966 PA 138, MCL 552.451 to
7 552.459.

8 (d) Section 1701 of the revised judicature act of 1961, 1961
9 PA 236, MCL 600.1701.

10 (e) 1968 PA 293, MCL 722.1 to 722.6.

11 (f) The child custody act of 1970, 1970 PA 91, MCL 722.21 to
12 ~~722.30~~ 722.31.

13 (g) The paternity act, 1956 PA 205, MCL 722.711 to 722.730.

14 (2) Even if another act of this state provides that this act
15 applies to support orders issued under the other act, if that
16 other act contains a specific provision regarding the contents or
17 enforcement of the support order that conflicts with this act,
18 the other act controls in regard to that provision.

19 (3) NOTHING IN THIS SECTION SHALL AUTHORIZE THE IV-D AGENCY
20 TO PURSUE ENFORCEMENT ACTION UNDER APPLICABLE LAWS EXCEPT AS OTH-
21 ERWISE SPECIFICALLY AUTHORIZED BY STATUTE OR COURT RULE.

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~~ 1 OF THE
24 FOLLOWING:

25 (A) THE court is satisfied that by the exercise of diligence
26 the payer could have the capacity to pay all or some portion of

1 the amount due under the support order and that the payer fails
2 or refuses to do so.

3 (B) THE PAYER HAS FAILED TO OBTAIN A SOURCE OF INCOME AND
4 HAS FAILED TO PARTICIPATE IN A WORK ACTIVITY AFTER REFERRAL BY
5 THE FRIEND OF THE COURT.

6 (2) Upon finding a payer in contempt of court under this
7 section, the court ~~may immediately enter an order doing~~ SHALL,
8 ABSENT GOOD CAUSE TO THE CONTRARY, IMMEDIATELY ORDER THE PAYER TO
9 PARTICIPATE IN A WORK ACTIVITY AND MAY ALSO DO 1 or more of the
10 following:

11 (a) ~~Committing~~ COMMIT the payer to the county jail with
12 the privilege of leaving the jail during the hours the court
13 determines, and under the supervision the court considers, neces-
14 sary for the purpose of allowing the payer to ~~go to and return~~
15 ~~from his or her place of employment or, if the person wishes to~~
16 ~~seek employment, to seek employment~~ PARTICIPATE IN A WORK
17 ACTIVITY.

18 (b) If the payer holds an occupational license, driver's
19 license, or recreational or sporting license, conditioning a sus-
20 pension of the payer's license, or any combination of the
21 licenses, upon noncompliance with an order for payment of the
22 arrearage in 1 or more scheduled installments of a sum certain.
23 A court shall not order the sanction authorized by this subdivi-
24 sion unless the court finds that the payer has accrued an arrear-
25 age of support payments in an amount greater than the amount of
26 periodic support payments payable for 2 months under the payer's
27 support order.

~~(c) Ordering the payer to participate in a work activity.~~
~~This subdivision does not alter the court's authority to include~~
~~provisions in an order issued under this section concerning a~~
~~payer's employment or his or her seeking of employment as that~~
~~authority exists on August 10, 1998.~~

(C) ~~(d)~~ If available within the court's jurisdiction,
order the payer to participate in a community corrections program
established as provided in the community corrections act, 1988
PA 511, MCL 791.401 to 791.414.

(3) Notwithstanding the length of commitment imposed under
this section, the court may release a payer who is unemployed
when committed to a county jail under this section and who finds
employment if either of the following applies:

(a) The payer is self-employed, completes 2 consecutive
weeks at his or her employment, and makes a support payment as
required by the court.

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

(4) If the court enters an order under subsection (2)(b) and
the payer fails to comply with the arrearage payment schedule,
after notice and an opportunity for a hearing, the court shall
order suspension of the payer's license or licenses with respect
to which the order under subsection (2)(b) was entered and shall
proceed under section 30.