

## **INCOME WITHHOLDING ADJUSTMENTS FOR ARREARAGES**

**House Bill 4772 (Substitute H-1)  
First Analysis (6-24-03)**

**Sponsor: Rep. Barb Vander Veen  
Committee: Judiciary**

### ***THE APPARENT PROBLEM:***

Under Title IV-D of the federal Social Security Act (42 U.S.C. 666), a state plan for child support enforcement must include a mechanism for withholding from a payer's income an amount payable as child support. Provisions in state statute relating to income withholding are found in the Support and Parenting Time Enforcement Act (SPTEA) and the Uniform Interstate Family Support Act (UIFSA). THE UIFSA applies to cases that cross state lines and permits states to initiate direct income withholding actions against non-residents and requires employers to honor direct income withholding orders from other states if the order "appears regular on its face."

Under the SPTEA, after July 1, 1983, each support order entered or modified by the circuit court shall provide for an order of income withholding. Further, the act requires any order of income withholding in a support order entered or modified after December 31, 1990 to take effect immediately unless the court determines there is good cause for the order to not take effect immediately, the parties reach a written agreement (entered in the record by the court) that states that the income withholding order shall not take effect immediately, and they have reached an alternative payment arrangement.

An order for income withholding must be used as a child support enforcement mechanism under SPTEA when a payer is employed or derives income within Michigan, a support order has been issued or modified in the state, or a support order has been registered for enforcement and/or modification under UIFSA.

An order of income withholding is binding on a 'source of income' (generally, an employer) seven days after service upon the source. The order remains effective until further order of the court. Sources of income are required to transmit to the State Disbursement Unit (SDU) an amount withheld

from a payer's income within three days of the withholding.

Faced with an estimated \$6 billion in unpaid child support owed to children in the state, then-Governor John Engler and Michigan Supreme Court Chief Justice Maura Corrigan proposed a package of bills during the 2001-2002 legislative session designed to clarify and strengthen existing law and centralize and streamline procedures taken to enforce orders. The bills were 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 (Public Acts 564 to 574)]. Along similar lines, legislation has been introduced that would allow for the administrative adjustment of income withholding orders to account for arrearages.

### ***THE CONTENT OF THE BILL:***

The bill would make several amendments to the Support and Parenting Time Enforcement Act.

Under the act, the Friend of the Court (FOC) is required to send notice of a child support arrearage to a payer if the arrearage reaches a level that triggers certain enforcement proceedings. The bill would amend this provision so that it would apply only if an income withholding is not immediately effective and there is an arrearage that requires enforcement proceedings, or if the amount of the income withholding is administratively adjusted. In addition, the bill would add language requiring the notice to contain a statement that the payer's income withholding is being administratively adjusted and the amount of the adjustment.

In addition, the bill would permit a payer to request a hearing within 21 days of the notice to contest the income withholding if the administrative adjustment will cause an unjust or inappropriate result. The bill would also delete a requirement that the notice state

that if the hearing is held before a referee, the payer has a right to a de novo hearing before a circuit court judge. The bill would require that the notice include information on the place where a request for a hearing would have to be filed and that a person could request a hearing by filing a request in accordance with the provisions contained in the notice and by serving a copy on the other party.

Further, the bill would specify that a hearing concerning implementation of an income withholding that was not previously effective could be requested only on the grounds that the income withholding is not proper due to a mistake of fact concerning the amount of current or overdue support or the identity of the payer. If a payer requested a hearing, the notice and the request would have to be filed with the clerk of the court as a motion contesting the proposed action.

Under the act, if the payer establishes at the hearing that the withholding is improper due to a mistake of fact, the referee or circuit judge may rescind the order of income withholding. The bill would amend this provision to require that the income withholding be modified or rescinded if the payer established that the income withholding was improper or that the implementation of an administrative adjustment of the periodic payment of arrears to be withheld will cause an unjust or inappropriate result.

Under the act, the court may find a source of income (that is, an employer or other entity that owes the payer income) to be in contempt and fine that source of income if the source of income is served with a notice of income withholding and fails to comply with the notice. The bill would allow the court to also require the source of income to pay an amount pursuant to Section 11a(2) if the terms of that section have been met. [Note: Under Section 11a(2), a source of income is liable for any amount that the source knowingly and intentionally fails to withhold from the payer's income following service of notice of the income withholding, except as limited by the federal Consumer Credit Protection Act.] In addition, the bill states that the IV-D agency (the Office of Child Support) would be responsible for initiating contempt proceedings, and that those proceedings could be initiated in any county with jurisdiction over the source of income.

In addition, the act permits the circuit court to take other enforcement action under applicable laws. The bill would specify that nothing in this provision would authorize the IV-D agency to pursue

enforcement action under applicable laws except as specifically authorized by statute or court rule.

The bill would also permit the court to find a payer in contempt if he or she had failed to obtain a source of income and had failed to participate in a work activity after referral by the FOC. In addition, the act permits the court, upon finding a payer in contempt, to commit the payer to the county jail with the privilege of leaving, as the court determines, to go to and return from a place of employment or to seek employment. The bill would amend this provision to instead permit the court to commit the payer to the county jail with the privilege of leaving, as the court determines, to allow the payer to participate in a "work activity" (which is defined in the act and encompasses more than traditional employment).

MCL 552.607 et al.

### ***BACKGROUND INFORMATION:***

Work Activity. The bill would require a court to require a person found in contempt and who owes past due child support to participate in a work activity. Under the Support and Parenting Time Enforcement Act, 'work activity' includes the following (see MCL 552.602):

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available;
- On-the-job training;
- Referral to and participation in the Work First program prescribed in the Social Welfare Act;
- Community service programs;
- Vocational education training, not to exceed 12 months;
- Job skills training directly related to employment;
- Education directly related to employment, in the case of an individual who has not received a high school diploma or a certificate of high school equivalency;

- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of an individual who has not completed secondary school or received such a certificate;
- The provision of child care services to an individual who is participating in a community service program.

### ***FISCAL IMPLICATIONS:***

The bill should have no fiscal impact on the FIA. The additional requirements and penalties may result in a modest increase in judiciary and FOC costs, but the amount is not determinable. (HFA analysis dated 6-20-03).

### ***ARGUMENTS:***

#### ***For:***

The bill adds provisions allowing for administrative modification of an order of income withholding due to support arrearages. Current practice varies between courts as the statute and court rules are not entirely clear on this matter. In general, courts in the larger counties read the statute and court rules so as to give the Friend of the Court the implied authority to administratively modify an income withholding order to account for arrearages. Courts in smaller counties, generally, do not do so. As such, counties in which the practice is not allowed require an additional court order to modify an income withholding order (which also drags out the process and consumes the time and resources of the court, something that the previous Friend of the Court package had sought to ameliorate). Given the varying degree to which the Friend of the Court office may administratively modify an income withholding order, there is a need for a uniform state practice. Placing in statute clear language permitting Friend of the Court offices to administratively adjust an income withholding order to account for past due support creates that needed uniform statewide process.

#### ***For:***

The bill also clarifies provisions relating to findings of contempt for failure to pay ordered child support. Under current law, the source of income is liable for any amount that it knowingly and intentionally fails to withhold from the payer's income except as the payment amount is limited by the federal Consumer Credit Protection Act. In addition, the act states that the court may find a source of income (e.g., an employer) in contempt, and fine the source if it fails

to withhold the required amount. However, the act does not explicitly state that the court may require the source to pay an amount that it knowingly and intentionally fails to withhold from a payer's income. Doing so ensures that a child for whom support has been ordered actually receives child support payments.

#### ***For:***

Current law permits a court to refer a payer to participate in a work activity. The bill, however, requires a court to order a payer to participate in a work activity, absent a showing of good cause. This ensures that delinquent payers are making a concerted effort to obtain adequate employment (and thereby pay child support through the income withholding).

#### ***For:***

The bill also clarifies a provision in the act that permits the circuit court to take other enforcement actions under other applicable state laws. In recent years, this language has been problematic as various IV-D agencies (the Friend of the Court, the state Office of Child Support, local prosecuting attorneys) have employed a variety of enforcement activities. The bill clearly states that the IV-D agency may not pursue enforcement action unless specifically authorized by statute or court rule. This added provision also provides a uniform guideline throughout the state and among the various agencies in initiating enforcement activities.

### ***POSITIONS:***

The Friend of the Court Association supports the bill. (6-2-03)

The Family Law Section of the State Bar of Michigan opposes the bill. (6-23-03)

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.