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BILL ANALYSIS

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House Bill 4772 (Substitute H-1 as passed by the House)
Sponsor: Representative Barb Vander Veen (H.B. 4772)
House Committee: Judiciary
Senate Committee: Families and Human Services

Date Completed: 2-10-04

CONTENT

The bill would amend the Support and Parenting Time Enforcement Act to do the following:

- Require the Friend of the Court (FOC) to send a notice of arrearage if a support payer's income withholding were being administratively adjusted.**
- Revise requirements regarding information that must be included in an arrearage notice.**
- Allow a payer to contest an order of income withholding on the ground that an administrative adjustment would cause an unjust or inappropriate result.**
- Revise provisions under which an employer may be held in contempt for failing to comply with an income withholding order.**
- Allow a court to find a payer in contempt for failing to obtain a source of income and participate in a work activity after referral by the FOC.**
- Require a court, upon finding a payer in contempt, to order him or her to participate in a work activity.**

The bill is described below in further detail.

Notice Requirements

The Act requires the Office of the Friend of the Court to send notice of an arrearage to a payer at his or her last known address, if the arrearage reaches the amount that requires the initiation of one or more support enforcement measures as provided in Section 11 of the Friend of the Court Act. (Section 11 requires the Office to initiate enforcement measures when the arrearage under a support order is equal to or greater than the monthly amount of support payable under the order.) Under the bill, the Office would have to send the notice if the arrearage reached the amount requiring enforcement measures and income withholding were not immediately effective, or if the amount of income withholding were administratively adjusted for arrears under the Friend of the Court Act.

Currently, the notice must state that the payer's income is subject to income withholding and the amount to be withheld. The bill would require the notice either to contain that information, or to state that the payer's income withholding was being administratively adjusted and the amount of the adjustment.

Under the Support and Parenting Time Enforcement Act, the notice must inform the payer that he or she may request a hearing to contest the withholding, within 21 days after the date of the notice, but only on the ground that the withholding is not proper because of a factual

mistake concerning the amount of current or overdue support or the payer's identity. Under the bill, if the notice included an administrative adjustment of arrears, the notice would have to inform the payer that he or she could request a hearing on the ground that the adjustment would cause an unjust or inappropriate result. The bill also would require the notice to include the place where a request for a hearing would have to be filed.

The bill would delete a requirement that a notice include a statement that, if a hearing is held before a referee, the payer has a right to a de novo hearing before a circuit court judge,

Hearing

The Act allows a payer to request a hearing within 21 days after receiving a notice of arrearage. Under the bill, the payer would have to file the request as provided in the notice and serve a copy on the other party. If a payer requested a hearing, the notice and request would have to be filed with the court clerk as a motion contesting the proposed action.

The Act requires a referee or circuit court judge to hold a requested hearing within 14 days. If the payer establishes at the hearing that the withholding is not proper because of a factual mistake concerning the amount of current or overdue support or the payer's identity, the referee or judge may direct the income withholding order to be rescinded. Under the bill, if the payer established that the withholding was not proper because of a factual mistake, or that periodic implementation of an administrative adjustment of the amount of the periodic payment of arrears to be withheld would cause an unjust or inappropriate result, the income withholding would have to be modified or rescinded according to the guidelines for setting and administratively adjusting the amount of periodic payments for overdue support established under the Friend of the Court Act.

Noncompliance by an Employer

Under the Support and Parenting Time Enforcement Act, the court may find a source of income in contempt and fine the source if the source is served with an income withholding notice and fails to comply with it or pay withheld amounts to the FOC after the order becomes binding. (The Act defines "source of income" as an employer or successor employer or another individual or entity that owes or will owe income to the payer.) Under the bill, the court also could require the source of income to pay an amount according to Section 11a(2) if the terms of that section were satisfied. (Under that section, a source of income is liable for an amount that the source knowingly and intentionally fails to withhold from the payer's income following service on the source of a notice of income withholding.)

The bill provides that the IV-D agency would be responsible for initiating contempt proceedings. (Under the Act, "IV-D agency" means the State agency performing the functions under Part D of Title IV of the Social Security Act and includes a person performing those functions under contract, including an office of the FOC and a prosecuting attorney. The Family Independence Agency is the State's Title IV-D agency.) Contempt proceedings could be initiated in any county with jurisdiction over the source of income.

The Act allows the circuit court to take other enforcement action under applicable laws, including those listed in the Act. If another law of the State provides that this Act applies to support orders issued under the other law, the other law nevertheless controls if it contains a specific, conflicting provision regarding the contents or enforcement of the support order. The bill specifies that nothing in these provisions would authorize the IV-D agency to pursue enforcement action under applicable laws except as otherwise specifically authorized by statute or court rule.

Work Activity

The Act allows a court to find a payer in contempt if it finds that the payer is in arrears and if the court is satisfied that by the exercise of diligence the payer could have the capacity to pay all or portion of the amount due and that the payer fails or refuses to do so. Under the bill, the court also could find the payer in contempt if it found that the payer had failed to obtain a source of income and had failed to participate in a work activity after referral by the FOC.

Under the Act, upon finding a payer in contempt of court, the court immediately may enter an order committing the payer to jail, with the privilege of leaving in order to go to and return from employment or to seek employment; conditioning a suspension of the payer's occupational, recreational or sporting, or driver's license upon noncompliance with an order for payment of the arrearage; or requiring the payer to participate in a work activity. The bill, instead, would require the court, upon finding a payer in contempt, absent good cause to the contrary, immediately to order the payer to participate in a work activity. The court also could commit the payer to jail with the privilege of leaving in order to participate in a work activity, and/or condition a license suspension on noncompliance with an order for payment of the arrearage.

(The Act defines "work activity" as: 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, or other job search and job readiness assistance; community service programs; vocational educational training; job skills training directly related to employment; education directly related to employment; satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence; or the provision of child care services to an individual who is participating in a community service program.)

MCL 552.607 et al. (H.B. 4772)

Legislative Analyst: Julie Koval

FISCAL IMPACT

It appears that the bill would have no fiscal impact on the Family Independence Agency. The Family Independence Agency, being the IV-D Agency, may incur some indeterminate administrative costs if it chooses to initiate contempt proceedings regarding a source of income.

The bill would have no fiscal impact on the judiciary.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.