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House Bill 4774 (Substitute H-1 as passed by the House)  
Sponsor: Representative Jim Howell  
House Committee: Judiciary  
Senate Committee: Families and Human Services

Date Completed: 2-9-04

### **CONTENT**

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

- Require a surcharge on past due support to be computed at 4% for each semiannual cycle and assessed on January 1 and July 1.**
- Provide that a surcharge could not be assessed under certain circumstances.**
- Allow a party or the Friend of the Court (FOC) to file a motion for a repayment plan providing for the discharge of a surcharge and the waiver of a future surcharge, for surcharges accruing after the bill's effective date.**

#### Surcharge Calculation & Collection

Currently, under amendments enacted by Public Act 276 of 2003, a surcharge must be added to support payments that are past due as of January 1 and July 1. The surcharge must be calculated at six-month intervals at an annual rate of interest equal to 1% plus the average interest rate paid at auctions of five-year United States treasury notes during the preceding six months. (Previously, the surcharge was calculated on January 1 and July 1 at an 8% annual rate.)

Under the bill, a surcharge on past due support would have to be calculated at 4% for each semiannual cycle. As provided in Public Act 276, the amount of the surcharge could not compound. Except as described below, the surcharge would have to be assessed on a semiannual cycle on January 1 and July 1 of each year.

Beginning on April 1, 2004, a surcharge could not be assessed for the current semiannual cycle in cases in which the FOC was collecting on a current child support obligation, the payer had paid at least 90% of the most recent semiannual obligation during the semiannual cycle, and the total amount of past due child support owed as of the assessment date was less than the total amount owed as of the assessment date of the previous semiannual cycle. ("Most recent semiannual obligation" would mean the total amount of current child support owed by a parent during the preceding January 1 to June 30 or July 1 to December 31.)

For a support order entered after the bill's effective date, a surcharge could not be assessed for any period of time a support order did not exist when support was later ordered for that period. In addition, a surcharge could not be assessed if it were waived or abated under a court order.

A surcharge would have to be collected and enforced by any means authorized under the Support and Parenting Time Enforcement Act, the Friend of the Court Act, or another

appropriate Federal or State law for the enforcement and collection of child support, and paid through the State Disbursement Unit (in the Office of Child Support).

#### Discharge & Waiver

A party or the FOC could file a motion with the court for a repayment plan order that provided for the discharge of amounts assessed as surcharge and for the waiver of future surcharge. After notice and a hearing, the court would have to enter the repayment plan order if it found that all of the following were true:

- The arrearage did not arise from conduct the payer engaged in exclusively for the purpose of avoiding a support obligation.
- The payer had no present ability, and would not have an ability in the foreseeable future, to pay the arrearage absent a repayment plan that waived or discharged amounts assessed as surcharge.
- The plan was reasonable based on the payer's current ability to pay.
- The surcharge accrued or would accrue after the bill's effective date.

After entry of the order, if the court found that the payer had failed substantially to comply with the repayment plan, upon notice and a hearing, the court would have to enter an order reinstating the surcharge and all or part of the surcharge that was discharged.

MCL 552.602 et al.

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State government. Effective January 15, 2004, the Support and Parenting Time Enforcement Act was amended by Public Act 276 of 2003, which eliminated the compounding interest on overdue support payments and set the surcharge at 1% plus the average interest paid on five-year U.S. treasury notes. The average interest for the period between July 1 and December 31, 2003, was 3.195%. The 4% surcharge under House Bill 4774 (H-1) would be very close to the estimated 4.2% surcharge calculated under the previous law. In addition, the list of exceptions for surcharge assessment would reduce the amount of money collected.

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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.