

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4792

A bill to amend 1982 PA 295, entitled
"Support and parenting time enforcement act,"
(MCL 552.601 to 552.650) by adding section 5e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5e. (1) A payer who has an arrearage under a support
2 order may seek relief from the arrearage by complying with the
3 amnesty under section 3b of the office of child support act, 1971
4 PA 174, MCL 400.233b, or by filing a motion with the circuit
5 court for a payment plan to pay arrearages and to discharge or
6 abate arrearages. Except as provided in subsection (7)(d), if
7 the payer files a motion for a payment plan, the court shall
8 approve the plan after notice and a hearing if it finds by a
9 preponderance of the evidence that the plan is in the best
10 interest of the parties and children and that either of the
11 following applies:

1 (a) The arrearage is owed to an individual payee and both of
2 the following:

3 (i) The payee has consented to entry of the order under
4 circumstances that satisfy the court that the payee is not acting
5 under fear, coercion, or duress.

6 (ii) The payer establishes that the arrearage did not arise
7 from conduct by the payer engaged in exclusively for the purpose
8 of avoiding a support obligation.

9 (b) The arrearage is owed to this state or a political
10 subdivision of this state, and the payer establishes the
11 following:

12 (i) The arrearage did not arise from conduct by the payer
13 engaged in exclusively for the purpose of avoiding a support
14 obligation.

15 (ii) The payer has no present ability, and will not have an
16 ability in the foreseeable future, to pay the arrearage absent a
17 payment plan.

18 (iii) The payment plan will pay a reasonable portion of the
19 arrearage over a reasonable period of time in accordance with the
20 payer's current ability to pay. A payment plan that does not pay
21 the entire arrearage shall:

22 (A) As to a payer who has an income at or below the poverty
23 level, require payments for at least 24 months.

24 (B) As to a payer who has an income in excess of the poverty
25 level, require payments for at least 24 months plus 1 additional
26 month for each \$1,000.00 above the poverty level that the payer
27 earns.

1 (iv) The office of child support or its designee has been
2 served with a copy of the motion at least 56 days before the
3 hearing.

4 (2) When the payer has completed the plan, the payer shall
5 provide notice to interested parties and obtain a hearing before
6 the court. If, after notice and hearing, the court finds that
7 the payer has completed the payment plan, the court shall enter
8 an order discharging the remaining arrearage, if any. If the
9 court finds that the payer has substantially completed the
10 payment plan, the court may enter an order granting relief
11 appropriate to the circumstances of the case.

12 (3) A payment plan may provide for discharge of any portion
13 of an arrearage that meets the requirements under subsection (2),
14 even if other portions of the arrearage do not meet those
15 requirements.

16 (4) A payment plan under subsection (1) shall provide that
17 arrearages subject to the payment plan may be reinstated upon
18 motion and hearing for good cause shown at any time during the
19 pendency of the payment plan. Good cause includes, but is not
20 limited to, the payee becoming a recipient of public assistance,
21 or the payer receiving property sufficient to pay a substantial
22 portion of the amount discharged, including, but not limited to,
23 lottery proceeds, other winnings, a settlement under an insurance
24 policy or a judgment in a civil action, or an inheritance.

25 (5) A court shall require conditions in the payment plan in
26 addition to the payment of support that the court determines are
27 in the best interests of a child, including, but not limited to,

1 any of the following:

2 (a) A payer's a participation in a parenting program.

3 (b) Drug and alcohol counseling.

4 (c) Anger management classes or participation in a batterer
5 intervention program that meets the standards recommended by the
6 governor's task force on batterer intervention standards.

7 (d) Participation in a work program.

8 (e) Counseling.

9 (f) Continuing compliance with a current support order.

10 (6) This section does not modify the right of a party to
11 receive other child support credits to which the payer is
12 entitled nor prevent the court from correcting a support order
13 under other applicable law or court rule.

14 (7) In making its findings under subsection (1), the court
15 shall consider any written comments submitted before the hearing
16 by the office of child support or its designee. When written
17 comments have not been submitted, the court may do any of the
18 following:

19 (a) Adjourn the hearing to seek written comments before
20 making its decision.

21 (b) Appoint an examiner who shall review the payer's assets
22 and the plan and make a recommendation concerning the plan or
23 propose an alternative plan to the court. The examiner shall be
24 paid by the payer for services provided under terms and
25 conditions the court establishes separate from any payments made
26 through the friend of the court or state disbursement unit.

27 (c) Appoint a receiver who shall review the payer's assets

1 and the plan and make a recommendation concerning the plan or
2 propose an alternative plan to the court. The receiver shall
3 have the powers of a receiver under all applicable laws and may,
4 at the court's discretion, use the payer's assets to complete the
5 plan or otherwise monitor the payer's progress in completing the
6 plan. The receiver shall be paid by the payer for services
7 provided under terms and conditions the court establishes
8 separately from any payments made through the friend of the court
9 or state disbursement unit.

10 (d) Approve the plan as presented, but only if the payer
11 satisfies the requirements of subsection (1) by clear and
12 convincing evidence.

13 (e) Deny the plan as presented if the court finds that the
14 payer has not satisfied the requirements of subsection (1).

15 (8) If the court approves a plan under subsection (1)(b),
16 that approval shall be considered the state's consent to a
17 compromise of the arrearage.

18 (9) An arrearage subject to a plan under subsection (1) shall
19 continue to be enforced under this act, the office of child
20 support act, and the friend of the court act, when federal or
21 state law requires the enforcement action. When federal or state
22 law does not require the enforcement action, an arrearage subject
23 to a plan under subsection (1) may continue to be enforced as
24 allowed under this act, the office of child support act, and the
25 friend of the court act, except that when the payer is complying
26 with the plan, a referee, judge, or person conducting an
27 administrative review or hearing as allowed under the acts shall

1 not allow enforcement to continue when the statute permits the
2 exercise of discretion in using the enforcement and the payer is
3 complying with the plan.

4 (10) A person who knowingly provides false information on a
5 motion filed under subsection (1) is guilty of a misdemeanor
6 punishable by imprisonment for not more than 180 days or a fine
7 of not more than \$1,000.00, or both.

8 (11) A title IV-D agency shall comply with the amnesty
9 program established under section 3b of the office of child
10 support act, 1971 PA 174, MCL 400.233b. If prosecution has been
11 initiated under section 161, 165, or 167 of the Michigan penal
12 code, 1931 PA 328, MCL 750.161, 750.165, and 750.167, before the
13 payer seeks participation in the child support amnesty program or
14 a payment plan under this section, the individual is not eligible
15 to participate in the child support amnesty program or a payment
16 plan under this section.

17 Enacting section 1. This amendatory act takes effect
18 February 28, 2005.