

# HOUSE BILL No. 4772

May 28, 2003, Introduced by Reps. Vander Veen and Voorhees and referred to the Committee on Judiciary.

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, section 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**  
2 **withholding is not immediately effective and** the arrearage under  
3 a support order reaches the arrearage amount that requires the  
4 initiation of 1 or more support enforcement measures as provided  
5 in 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

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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**  
9 **administratively 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 subsection (4)**  
17 **in writing** within 21 days after the date of the notice to contest  
18 the withholding, but only on the grounds that the withholding is  
19 not proper because of a mistake of fact concerning the amount of  
20 current or overdue support or the identity of the payer, **and if**  
21 **the notice includes an administrative adjustment of arrears, that**  
22 **the administrative adjustment will cause an unjust or**  
23 **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  
4 support order.

5 (2) A copy of the notice provided for in subsection (1) shall  
6 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**  
11 **concerning implementation of income withholding that was not**  
12 **previously effective may be requested only** on the grounds that  
13 the withholding is not proper because of a mistake of fact  
14 concerning the amount of current or overdue support or the  
15 identity of the 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  
23 support or the identity of the payer, ~~the referee or circuit~~  
24 ~~judge may direct that the order of income withholding be~~  
25 ~~rescinded until such time as the referee or judge determines~~ or  
26 **that implementation of an administrative adjustment of the amount**  
27 **of arrears to be withheld will cause an unjust or inappropriate**

1 **result, the income withholding shall be modified or rescinded.**

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

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

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

15 Sec. 13. The court may find a source of income in contempt,  
16 **require the source of income to pay an amount according to**  
17 **section 11a(2) if the terms of that section have been satisfied,**  
18 and fine the source of income if the source of income is served  
19 with a notice of income withholding and fails to comply with the  
20 notice or to pay withheld amounts to the friend of the court  
21 after the order becomes binding under section 11. **The IV-D**  
22 **agency is responsible for initiating contempt proceedings under**  
23 **this section. Contempt proceedings under this section may be**  
24 **initiated in any county with jurisdiction over the source of**  
25 **income.**

26 Sec. 27. (1) ~~The~~ **According to court rules, the** circuit  
27 court may take other enforcement action under applicable laws,

1 including, but not limited to, the following:

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

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

4 (c) The family support act, 1966 PA 138, MCL 552.451 to  
5 552.459.

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

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

9 (f) The child custody act of 1970, 1970 PA 91, MCL 722.21 to  
10 ~~722.30~~ **722.31**.

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

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

17 **(3) Nothing in this section authorizes the IV-D agency to**  
18 **pursue enforcement action under applicable laws except as**  
19 **otherwise specifically authorized by statute or court rule.**

20 Sec. 35. (1) The court may find a payer in contempt if the  
21 court finds that the payer is in arrears and ~~if the~~ **1 of the**  
22 **following:**

23 **(a) The** court is satisfied that by the exercise of diligence  
24 the payer could have the capacity to pay all or some portion of  
25 the amount due under the support order and that the payer fails  
26 or refuses to do so.

27 **(b) The payer has failed to obtain a source of income and has**

1 failed to participate in a work activity after referral by the  
2 friend of the court.

3 (2) Upon finding a payer in contempt of court under this  
4 section, the court ~~may immediately enter an order doing~~ **shall,**  
5 **absent good cause to the contrary, immediately order the payer to**  
6 **participate in a work activity and may also do** 1 or more of the  
7 following:

8 (a) ~~Committing~~ **Commit** the payer to the county jail with the  
9 privilege of leaving the jail during the hours the court  
10 determines, and under the supervision the court considers,  
11 necessary for the purpose of allowing the payer to ~~go to and~~  
12 ~~return from his or her place of employment or, if the person~~  
13 ~~wishes to seek employment, to seek employment~~ **participate in a**  
14 **work activity.**

15 (b) If the payer holds an occupational license, driver's  
16 license, or recreational or sporting license, ~~conditioning~~  
17 **condition** a suspension of the payer's license, or ~~any~~ **a**  
18 combination of the licenses, upon noncompliance with an order for  
19 payment of the arrearage in 1 or more scheduled installments of a  
20 sum certain. A court shall not order the sanction authorized by  
21 this subdivision unless the court finds that the payer has  
22 accrued an arrearage of support payments in an amount greater  
23 than the amount of periodic support payments payable for 2 months  
24 under the payer's support order.

25 ~~(c) Ordering the payer to participate in a work activity.~~  
26 ~~This subdivision does not alter the court's authority to include~~  
27 ~~provisions in an order issued under this section concerning a~~

1 ~~payer's employment or his or her seeking of employment as that~~  
2 ~~authority exists on August 10, 1998.~~

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

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

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

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

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