

HOUSE BILL No. 4774

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

A bill to amend 1982 PA 295, entitled
"Support and parenting time enforcement act,"
by amending sections 2 and 3a (MCL 552.602 and 552.603a), as
amended by 2002 PA 572, and by adding section 3d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Account" means any of the following:

3 (i) A demand deposit account.

4 (ii) A draft account.

5 (iii) A checking account.

6 (iv) A negotiable order of withdrawal account.

7 (v) A share account.

8 (vi) A savings account.

9 (vii) A time savings account.

10 (viii) A mutual fund account.

1 (ix) A securities brokerage account.

2 (x) A money market account.

3 (xi) A retail investment account.

4 (b) "Account" does not mean any of the following:

5 (i) A trust.

6 (ii) An annuity.

7 (iii) A qualified individual retirement account.

8 (iv) An account covered by the employee retirement income
9 security act of 1974, Public Law 93-406, 88 Stat. 829.

10 (v) A pension or retirement plan.

11 (vi) An insurance policy.

12 (c) "Address" means the primary address shown on the records
13 of a financial institution used by the financial institution to
14 contact the account holder.

15 (d) "Cash" means money or the equivalent of money, such as a
16 money order, cashier's check, or negotiable check or a payment by
17 debit or credit card, which equivalent is accepted as cash by the
18 agency accepting the payment.

19 (e) "Custody or parenting time order violation" means an
20 individual's act or failure to act that interferes with a
21 parent's right to interact with his or her child in the time,
22 place, and manner established in the order that governs custody
23 or parenting time between the parent and the child and to which
24 the individual accused of interfering is subject.

25 (f) "Department" means the family independence agency.

26 (g) "Domestic relations matter" means a circuit court
27 proceeding as to child custody or parenting time, or child or

1 spousal support, that arises out of litigation under a statute of
2 this state, including, but not limited to, the following:

3 (i) 1846 RS 84, MCL 552.1 to 552.45.

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

6 (iii) Child custody act of 1970, 1970 PA 91, MCL 722.21 to
7 722.31.

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

9 (v) The paternity act, 1956 PA 205, MCL 722.711 to 722.730.

10 (vi) Revised uniform reciprocal enforcement of support act,
11 1952 PA 8, MCL 780.151 to 780.183.

12 (vii) Uniform interstate family support act, 1996 PA 310,
13 MCL 552.1101 to 552.1901.

14 (h) "Driver's license" means license as that term is defined
15 in section 25 of the Michigan vehicle code, 1949 PA 300, MCL
16 257.25.

17 (i) "Employer" means an individual, sole proprietorship,
18 partnership, association, or private or public corporation, the
19 United States or a federal agency, this state or a political
20 subdivision of this state, another state or a political
21 subdivision of another state, or another legal entity that hires
22 and pays an individual for his or her services.

23 (j) "Financial asset" means a deposit, account, money market
24 fund, stock, bond, or similar instrument.

25 (k) "Financial institution" means any of the following:

26 (i) A state or national bank.

27 (ii) A state or federally chartered savings and loan

1 association.

2 (iii) A state or federally chartered savings bank.

3 (iv) A state or federally chartered credit union.

4 (v) An insurance company.

5 (vi) An entity that offers any of the following to a resident
6 of this state:

7 (A) A mutual fund account.

8 (B) A securities brokerage account.

9 (C) A money market account.

10 (D) A retail investment account.

11 (vii) An entity regulated by the securities and exchange
12 commission that collects funds from the public.

13 (viii) An entity that is a member of the national association
14 of securities dealers and that collects funds from the public.

15 (ix) Another entity that collects funds from the public.

16 (l) "Friend of the court act" means **the friend of the court**
17 **act**, 1982 PA 294, MCL 552.501 to 552.535.

18 (m) "Friend of the court case" means that term as defined in
19 section 2 of the friend of the court act, MCL 552.502. The term
20 "friend of the court case", when used in a provision of this act,
21 is not effective until on and after ~~the effective date of~~
22 ~~section 5a of the friend of the court act, MCL 552.505a~~
23 **December 1, 2002.**

24 (n) "Income" means any of the following:

25 (i) Commissions, earnings, salaries, wages, and other income
26 due or to be due in the future to an individual from his or her
27 employer and successor employers.

1 (ii) A payment due or to be due in the future to an
2 individual from a profit-sharing plan, a pension plan, an
3 insurance contract, an annuity, social security, unemployment
4 compensation, supplemental unemployment benefits, or worker's
5 compensation.

6 (iii) An amount of money that is due to an individual as a
7 debt of another individual, partnership, association, or private
8 or public corporation, the United States or a federal agency,
9 this state or a political subdivision of this state, another
10 state or a political subdivision of another state, or another
11 legal entity that is indebted to the individual.

12 (o) "Insurer" means an insurer, health maintenance
13 organization, health care corporation, or other group, plan, or
14 entity that provides health care coverage in accordance with any
15 of the following acts:

16 (i) Public health code, 1978 PA 368, MCL 333.1101 to
17 333.25211.

18 (ii) The insurance code of 1956, 1956 PA 218, MCL 500.100 to
19 500.8302.

20 (iii) The nonprofit health care corporation reform act, 1980
21 PA 350, MCL 550.1101 to 550.1704.

22 (p) "Medical assistance" means medical assistance as
23 established under title XIX of the social security act, chapter
24 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8 to
25 1396v.

26 (q) **"Most recent semiannual obligation" means the total**
27 **amount of current child support owed by a parent during the**

1 preceding January 1 to June 30 or July 1 to December 31.

2 (r) ~~-(q)-~~ "Occupational license" means a certificate,
3 registration, or license issued by a state department, bureau, or
4 agency that has regulatory authority over an individual that
5 allows an individual to legally engage in a regulated occupation
6 or that allows the individual to use a specific title in the
7 practice of an occupation, profession, or vocation.

8 (s) ~~-(r)-~~ "Office of child support" means the office of child
9 support established in section 2 of the office of child support
10 act, 1971 PA 174, MCL 400.232.

11 (t) ~~-(s)-~~ "Office of the friend of the court" means an agency
12 created in section 3 of the friend of the court act, MCL
13 552.503.

14 (u) ~~-(t)-~~ "Order of income withholding" means an order
15 entered by the circuit court providing for the withholding of a
16 payer's income to enforce a support order under this act.

17 (v) ~~-(u)-~~ "Payer" means an individual who is ordered by the
18 circuit court to pay support.

19 (w) ~~-(v)-~~ "Person" means an individual, partnership,
20 corporation, association, governmental entity, or other legal
21 entity.

22 (x) ~~-(w)-~~ "Plan administrator" means that term as used in
23 relation to a group health plan under section 609 of ~~part 6 of~~
24 ~~subtitle B of~~ title I of the employee retirement income security
25 act of 1974, Public Law 93-406, 29 U.S.C. 1169, if the health
26 care coverage plan of the individual who is responsible for
27 providing a child with health care coverage is subject to that

1 act.

2 **(y)** ~~-(x)-~~ "Political subdivision" means a county, city,
3 village, township, educational institution, school district, or
4 special district or authority of ~~the~~ **this** state or of a local
5 unit of government.

6 **(z)** ~~-(y)-~~ "Recipient of support" means the following:

7 (i) The spouse, if the support order orders spousal support.

8 (ii) The custodial parent or guardian, if the support order
9 orders support for a minor child or a child who is 18 years of
10 age or older.

11 (iii) The department, if support has been assigned to that
12 department.

13 **(aa)** ~~-(z)-~~ "Recreational or sporting license" means a
14 hunting, fishing, or fur harvester's license issued under the
15 natural resources and environmental protection act, 1994 PA 451,
16 MCL 324.101 to 324.90106, but does not include a commercial
17 fishing license or permit issued under part 473 of the natural
18 resources and environmental protection act, 1994 PA 451, MCL
19 324.47301 to 324.47362.

20 **(bb)** ~~-(aa)-~~ "Referee" means a person who is designated as a
21 referee under the friend of the court act.

22 **(cc)** ~~-(bb)-~~ "Source of income" means an employer or successor
23 employer or another individual or entity that owes or will owe
24 income to the payer.

25 **(dd)** ~~-(cc)-~~ "State disbursement unit" or "SDU" means the
26 entity established in section 6 of the office of child support
27 act, 1971 PA 174, MCL 400.236.

1 **(ee)** ~~—(dd)—~~ "State friend of the court bureau" means that
 2 bureau as created in the state court administrative office under
 3 section 19 of the friend of the court act, MCL 552.519.

4 **(ff)** ~~—(ee)—~~ "Support" means all of the following:

5 (i) The payment of money for a child or a spouse ordered by
 6 the circuit court, whether the order is embodied in an interim,
 7 temporary, permanent, or modified order or judgment. Support may
 8 include payment of the expenses of medical, dental, and other
 9 health care, child care expenses, and educational expenses.

10 (ii) The payment of money ordered by the circuit court under
 11 the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the
 12 necessary expenses incurred by or for the mother in connection
 13 with her confinement, for other expenses in connection with the
 14 pregnancy of the mother, or for the repayment of genetic testing
 15 expenses.

16 (iii) A surcharge accumulated under section 3a.

17 **(gg)** ~~—(ff)—~~ "Support order" means an order entered by the
 18 circuit court for the payment of support, whether or not a sum
 19 certain.

20 **(hh)** ~~—(gg)—~~ "Title IV-D" means part D of title IV of the
 21 social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 651 to
 22 655, 656 to 657, 658a to 660, and 663 to 669b.

23 **(ii)** ~~—(hh)—~~ "Title IV-D agency" means the agency in this
 24 state performing the functions under title IV-D and includes a
 25 person performing those functions under contract including an
 26 office of the friend of the court or a prosecuting attorney.

27 **(jj)** ~~—(ii)—~~ "Work activity" means any of the following:

(i) Unsubsidized employment.

(ii) Subsidized private sector employment.

(iii) Subsidized public sector employment.

(iv) Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available.

(v) On-the-job training.

(vi) Referral to and participation in the work first program prescribed in the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or other job search and job readiness assistance.

(vii) Community service programs.

(viii) Vocational educational training, not to exceed 12 months with respect to an individual.

(ix) Job skills training directly related to employment.

(x) 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.

(xi) 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.

(xii) The provisions of child care services to an individual who is participating in a community service program.

Sec. 3a. (1) ~~For a friend of the court case, as of January 1 and July 1 of each year, a surcharge calculated at an 8% annual rate shall be added to support payments that are past due as of those dates. The amount shown as due and owing on the records of~~

1 ~~the friend of the court as of January 1 and July 1 of each year~~
2 ~~shall be reduced by an amount equal to 1 month's support for~~
3 ~~purposes of assessing the surcharge. A surcharge under this~~
4 ~~subsection shall not be added to support ordered under the~~
5 ~~paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the time~~
6 ~~period to the date of the support order. A surcharge on past due~~
7 **support shall be computed at 4% for each semiannual cycle. The**
8 **amount of the surcharge shall not compound.**

9 (2) ~~Upon receiving money for payment of support, the friend~~
10 ~~of the court shall apply the amount received first to current~~
11 ~~support and then to any support arrearage including any~~
12 ~~surcharges imposed under this section. A surcharge as computed~~
13 **in subsection (1) shall be assessed on a semiannual cycle on**
14 **January 1 and July 1 of each year except as otherwise provided**
15 **under subsection (3).**

16 (3) **A surcharge shall not be assessed for the current**
17 **semiannual cycle for any of the following:**

18 (a) **In cases in which the friend of the court is collecting**
19 **on a current child support obligation, the payer has paid 90% or**
20 **more of the most recent semiannual obligation during the**
21 **semiannual cycle, and the total amount of past due child support**
22 **owed as of the assessment date is less than the total amount of**
23 **past due support owed as of the assessment date of the previous**
24 **semiannual cycle.**

25 (b) **For any period of time a support order did not exist when**
26 **support is later ordered for that period.**

27 (c) **The surcharge is waived or abated under a court order**

1 under section 3d.

2 (4) The surcharge shall be collected and enforced by any
3 means authorized under this act, the friend of the court act, or
4 another appropriate federal or state law for the enforcement and
5 collection of child support and paid through the state
6 disbursement unit. A surcharge is not support until it is
7 collected. The amounts collected shall be paid as additional
8 support to the recipient of support.

9 Sec. 3d. (1) A party or the friend of the court may file a
10 motion with the court for a repayment plan order that provides
11 for discharge of amounts assessed as surcharge and for the waiver
12 of future surcharge. The court shall enter the repayment plan
13 order after notice and a hearing if the court finds that all of
14 the following are true:

15 (a) The arrearage did not arise from conduct by the payer
16 engaged in exclusively for the purpose of avoiding a support
17 obligation.

18 (b) The payer has no present ability, or ability in the
19 foreseeable future, to pay the arrearage absent a repayment plan
20 that waives or discharges amounts assessed as surcharge.

21 (c) The payer's plan is reasonable based on the payer's
22 current ability to pay.

23 (d) The surcharge accrued or will accrue after the effective
24 date of the amendatory act that added this section.

25 (2) Following entry of a repayment plan order under
26 subsection (1), upon notice and hearing if the court finds that
27 the payer has failed substantially to comply with the repayment

1 plan, the court shall enter an order reinstating the surcharge
2 and all or a portion of the surcharge that was discharged.