

Act No. 206
Public Acts of 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Vander Veen and Voorhees

ENROLLED HOUSE BILL No. 4772

AN ACT to amend 1982 PA 295, entitled "An act to provide for and to supplement statutes that provide for the provisions and enforcement of support, health care, and parenting time orders with respect to divorce, separate maintenance, paternity, child custody and support, and spousal support; to prescribe and authorize certain provisions of those orders; to prescribe the powers and duties of the circuit court and friend of the court; to prescribe certain duties of certain employers and other sources of income; to provide for penalties and remedies; and to repeal acts and parts of acts," by amending sections 7, 13, 27, 33, 35, and 42a (MCL 552.607, 552.613, 552.627, 552.633, 552.635, and 552.642a), section 7 as amended by 2002 PA 572, section 13 as amended by 1998 PA 334, section 27 as amended by 2001 PA 106, sections 33 and 35 as amended by 2002 PA 567, and section 42a as added by 2002 PA 568.

The People of the State of Michigan enact:

Sec. 7. (1) For a friend of the court case, if income withholding is not immediately effective and the arrearage under a support order reaches the arrearage amount that requires the initiation of 1 or more support enforcement measures as provided in section 11 of the friend of the court act, MCL 552.511, or, if the amount of income withholding is administratively adjusted for arrears under section 17e of the friend of the court act, MCL 552.517e, the office of the friend of the court immediately shall send notice of the arrearage to the payer by ordinary mail to his or her last known address. The notice to the payer shall contain the following information:

- (a) The amount of the arrearage.
- (b) One or both of the following:
 - (i) That the payer's income is subject to income withholding and the amount to be withheld.
 - (ii) That the payer's income withholding is being administratively adjusted and the amount of the adjustment.
- (c) That income withholding will be applied to current and subsequent employers and periods of employment and other sources of income.
- (d) That the order of income withholding is effective and notice to withhold income will be sent to the payer's source of income.
- (e) That the payer may request a hearing under subsection (4) in writing within 21 days after the date of the notice to contest the withholding, but only on the grounds that the withholding is not proper because of a mistake of fact

concerning the amount of current or overdue support or the identity of the payer, and if the notice includes an administrative adjustment of arrears, that the administrative adjustment will cause an unjust or inappropriate result.

(f) That if the hearing is held before a referee, the payer has a right to a de novo hearing before a circuit court judge. The place where a request for hearing under subsection (4) shall be filed.

(g) That if the payer believes that the amount of support should be modified due to a change in circumstances, the payer may file a petition with the court for modification of the support order.

(2) A copy of the notice provided for in subsection (1) shall be sent by ordinary mail to each recipient of support.

(3) A payer to whom notice is sent under subsection (1), within 21 days after the date on which the notice was sent, may request a hearing by filing a request for hearing as provided in the notice and serving a copy on the other party. A hearing concerning implementation of income withholding that was not previously effective may be requested only on the grounds that the withholding is not proper because of a mistake of fact concerning the amount of current or overdue support or the identity of the payer.

(4) If a payer requests a hearing under subsection (3), the notice and request shall be filed with the court clerk as a motion contesting the proposed action and a referee or circuit judge shall hold a hearing within 14 days after the date of the request. If at the hearing the payer establishes that the withholding is not proper because of a mistake of fact concerning the amount of current or overdue support or the identity of the payer, or that periodic implementation of an administrative adjustment of the amount of the periodic payment of arrears to be withheld will cause an unjust or inappropriate result, the income withholding shall be modified or rescinded according to the guidelines established under section 19 of the friend of the court act, MCL 552.519.

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

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

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

(8) The friend of the court office may review the objection administratively before a hearing is held before a referee or judge. If the friend of the court office reviews the objection administratively, either party may object and a hearing shall be held before a referee or judge.

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

Sec. 27. (1) Under the Michigan court rules, the circuit court may take other enforcement action under applicable laws, including, but not limited to, the following:

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

(b) 1913 PA 379, MCL 552.151 to 552.156.

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

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

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

(f) The child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31.

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

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

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

Sec. 33. (1) The court may find a payer in contempt if the court finds that the payer is in arrears and if the court is satisfied that the payer has the capacity to pay out of currently available resources all or some portion of the amount due under the support order. In the absence of proofs to the contrary introduced by the payer, the court shall presume that the payer has currently available resources equal to 4 weeks of payments under the support order. The court shall

not find that the payer has currently available resources of more than 4 weeks of payments without proof of those resources by the office of the friend of the court or the recipient of support. Upon finding a payer in contempt of court under this section, the court may immediately enter an order doing 1 or more of the following:

(a) Committing the payer to the county jail.

(b) Committing the payer to the county jail with the privilege of leaving the jail during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to go to and return from his or her place of employment.

(c) Committing the payer to a penal or correctional facility in this state that is not operated by the state department of corrections.

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

(e) Ordering the payer to participate in a work activity. This subdivision does not alter the court's authority to include provisions in an order issued under this section concerning a payer's employment or his or her seeking of employment as that authority exists on August 10, 1998.

(f) If available within the court's jurisdiction, order the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.

(g) Except as provided by federal law and regulations, ordering the parent to pay a fine of not more than \$100.00. A fine ordered under this subdivision shall be deposited in the friend of the court fund created in section 2530 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2530.

(2) If the court enters an order under subsection (1)(d) and the payer fails to comply with the arrearage payment schedule, after notice and opportunity for a hearing, the court shall order suspension of the payer's license or licenses with respect to which the order under subsection (1)(d) was entered and shall proceed under section 30.

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

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

(b) The payer has failed to obtain a source of income and has failed to participate in a work activity after referral by the friend of the court.

(2) Upon finding a payer in contempt of court under this section, the court shall, absent good cause to the contrary, immediately order the payer to participate in a work activity and may also do 1 or more of the following:

(a) Commit the payer to the county jail with the privilege of leaving the jail during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to participate in a work activity.

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

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

(d) Except as provided by federal law and regulations, order the parent to pay a fine of not more than \$100.00. A fine ordered under this subdivision shall be deposited in the friend of the court fund created in section 2530 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2530.

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

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

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

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

Sec. 42a. (1) A joint meeting scheduled by the office of the friend of the court under section 41 of this act or section 17 of the friend of the court act, MCL 552.517, and procedures following a joint meeting are governed by this section.

(2) A joint meeting may take place in person or by means of telecommunications equipment.

(3) Only an individual who completes the training program described in section 19(3)(b) of the friend of the court act, MCL 552.519, shall conduct a joint meeting. At the beginning of a joint meeting, the individual conducting the joint meeting shall do the following:

(a) Advise the parties that the purpose of the meeting is for the parties to reach an accommodation.

(b) Advise the parties that the individual may recommend an order that the court may issue to resolve the dispute.

(4) At the conclusion of a joint meeting, the individual conducting the joint meeting shall do 1 of the following:

(a) If the parties reach an accommodation, record the accommodation in writing and provide a copy to each party.

(b) Submit an order to the court stating the individual's recommendation for resolving the dispute.

(5) If the individual conducting a joint meeting submits a recommended order to the court under subsection (4), the individual shall send a notice to each party who participated in the joint meeting that includes all of the following:

(a) A copy of the recommended order.

(b) Notice that the court may issue the recommended order resolving the dispute unless a party objects to the order within 21 days after the notice is sent.

(c) The place where and time when a written objection can be submitted.

(d) Notice that a party may waive the 21-day objection period by returning a signed copy of the recommendation.

(6) If a party files a written objection within the 21-day limit, the office shall set a court hearing, before a judge or referee, to resolve the dispute. If a party fails to file a written objection within the 21-day limit, the office shall submit the proposed order to the court for entry if the court approves it.

(7) If a hearing under subsection (6) is held before a referee, either party is entitled to a de novo hearing before a judge as provided in section 7 of the friend of the court act, MCL 552.507.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor