

Act No. 211
Public Acts of 2004
Approved by the Governor
July 14, 2004
Filed with the Secretary of State
July 14, 2004
EFFECTIVE DATE: February 28, 2005

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

**Introduced by Reps. Garfield, Casperson, Brandenburg, Acciavatti, Tabor, Pastor, LaJoy, Drolet,
Voorhees, Vander Veen, Howell and Lipsey**

ENROLLED HOUSE BILL No. 4792

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," (MCL 552.601 to 552.650) by adding section 5e.

The People of the State of Michigan enact:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Drug and alcohol counseling.

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

(d) Participation in a work program.

(e) Counseling.

(f) Continuing compliance with a current support order.

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

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

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

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

(c) Appoint a receiver who shall review the payer's assets and the plan and make a recommendation concerning the plan or propose an alternative plan to the court. The receiver shall have the powers of a receiver under all applicable laws and may, at the court's discretion, use the payer's assets to complete the plan or otherwise monitor the payer's progress in completing the plan. The receiver shall be paid by the payer for services provided under terms and conditions the court establishes separately from any payments made through the friend of the court or state disbursement unit.

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

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

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

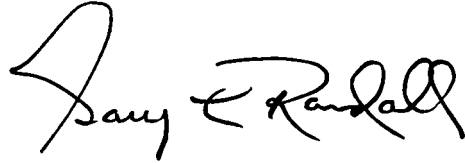
(9) An arrearage subject to a plan under subsection (1) shall continue to be enforced under this act, the office of child support act, and the friend of the court act, when federal or state law requires the enforcement action. When federal or state law does not require the enforcement action, an arrearage subject to a plan under subsection (1) may continue to be enforced as allowed under this act, the office of child support act, and the friend of the court act, except that when the payer is complying with the plan, a referee, judge, or person conducting an administrative review or hearing as allowed under the acts shall not allow enforcement to continue when the statute permits the exercise of discretion in using the enforcement and the payer is complying with the plan.

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

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

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