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BILL ANALYSIS

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Senate Bill 1128 (Substitute S-2 as reported)
Sponsor: Senator Valde Garcia
Committee: Families and Human Services

Date Completed: 5-5-06

RATIONALE

With the changing structure of the U.S. Armed Forces, the military increasingly relies on reserve units and the National Guard to contribute to the national defense, including major combat operations. Historically, such forces rarely played an active role in armed conflicts, but beginning with Operation Desert Storm in the 1990s and continuing to the present wars in Iraq and Afghanistan, reserve units frequently have been called into active service for a year or more at a time. In some cases, the units are sent overseas, or they may serve in a support capacity in the United States. Reserve soldiers who are called into active duty often take a cut in pay, since their military salaries frequently are less than their civilian income (although some employers offer supplemental pay to help compensate for the loss). Evidently, some individuals who pay child support and are called into active duty struggle to make their support payments, which were calculated based on their civilian income. It has been suggested that reserve soldiers, when called up for emergency military service, be allowed to request a temporary modification of their child support payment to reflect their military salaries.

CONTENT

The bill would amend the Support and Parenting Time Enforcement Act to allow a temporary modification of a child support order if a payer were called into emergency military service that reduced his or her income.

("Emergency military service" would mean that the payer was a member of a reserve unit or National Guard unit called into active

military duty for a period of more than 30 days.)

Specifically, if a payer (i.e., a person ordered by the circuit court to pay child support) were called to emergency military service, he or she could submit to the Office of the Friend of the Court a written request for a military service adjustment of his or her support obligation, along with information showing all military and civilian pay. An adjustment would have to be proportional to the payer's reduction in income.

As a rule, a payer would not be eligible for a military service adjustment before the date the Friend of the Court received the request. If the payer requested an adjustment within 56 days of the date he or she was called to emergency military service, however, the adjustment would have to take effect beginning on the date he or she began emergency military service. The adjustment would continue until 35 days after the service ended.

Upon receiving a request for a military service adjustment, the Friend of the Court would have to calculate the adjustment and notify all parties of the following: the amount of the adjustment; that they could object to the adjustment within 21 days; and the place and manner for filing objections.

If a party objected to the adjustment, the adjustment would have to continue until his or her objection was resolved. The Friend of the Court would have to do one or more of the following:

- Set a hearing before a judge or referee to determine whether the adjustment should be modified or set aside.
- Schedule a meeting between the parties to attempt to resolve the dispute.
- Conduct a support review, in which case the notice of adjustment would have to be treated as a petition for modification of support for determining an effective date for the modification.

The hearing, meeting, or review would have to be held upon the payer's return from emergency military service.

Proposed MCL 552.615a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

When reserve and National Guard units are called up for active duty, soldiers often experience a reduction in income, which can lead to financial difficulties. To help ease the strain, the bill would allow a soldier being called into active duty to request a temporary modification of his or her child support payment based on his or her active duty pay. The reduction would have to take into account all of the individual's income, including all military and civilian pay. The adjustment would be proportional to the lost pay; for example, if a soldier's active duty pay were 10% lower than his or her civilian salary, then his or her child support payment could be reduced by 10% during his or her tour of duty. Service members who experienced an increase in income during active duty would not be eligible for an adjustment under the bill.

Soldiers departing for active service often need some time to make all of the necessary preparations, but a service member generally is given only 30 days' notice when being called into active duty. During that time, he or she must take care of many personal matters, including making financial arrangements, notifying his or her employer, seeking any necessary medical treatment, and taking care of family concerns. Because of the short time frame involved and the many obligations that the departing soldier faces, the bill would allow a person to request a temporary reduction within 56

days of being called up for active duty, and the reduction, if granted, would take effect starting on the date he or she began full time military service. This provision would give the soldier sufficient time to apply, while complying with the Federal restrictions on the retroactive adjustment of child support obligations.

In many cases, reserve units may be called up during a conflict to serve in the United States, either in a support capacity or to fill in for other units that have been sent to a foreign country. The support units are crucial to the success of the military's mission, and those soldiers make the same personal sacrifices as any others to serve their country. Therefore, the bill would apply to all reservists, regardless of whether they served overseas or in this country.

Response: Although the bill basically would codify current practice, a custodial parent would have little say in the modification under the bill. If a party objected to a temporary modification, no action would be taken to resolve the objection until after the reserve member returned from active service. In the meantime, the modification would stand.

Furthermore, the process of dealing with the Friend of the Court is time-consuming and stressful, and having to miss work repeatedly to attend hearings and deal with lengthy processes could harm an individual's career or cause other problems. The bill should expedite the process by requiring the Friend of the Court to respond to an emergency modification request within a specific time, such as 48 hours or five business days. In addition, to speed up and simplify the process further, the Friend of the Court should allow applications to be filled out and submitted online, similar to the process used for online income tax returns.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.