



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

CHILD SUPPORT ARREARAGES; LIENS

House Bill 6004

Sponsor: Rep. Jim Howell

Committee: Civil Law and the Judiciary

Complete to 5-7-02

A SUMMARY OF HOUSE BILL 6004 AS INTRODUCED 5-7-02

The bill would amend the Support and Parenting Time Enforcement Act (Public Act 295 of 1982). Among more substantive changes, the bill would rename the "Friend of the Court" as the "Court Family Services Office".

Address Changes. The act requires a payer or payee to notify the Friend of the Court of any changes in his or her residential or mailing address within 21 days. The bill would require notification of any changes within seven days.

Support Orders. The bill would require a support order to state the amount of support as a monthly amount. If the amount were not stated as a monthly amount, it would be converted to a monthly amount using the formula established by the State Court Administrative Office. In addition, the order would state that the monthly amount accrues on the first day of each month and is due and payable prior to the first day of the following month.

In addition, under the bill, if a support order took effect on a day other than the first day of the month, the monthly amount would be prorated based on the daily amount for that month. However, a monthly support order would not be prorated for the last month in which the order is in effect.

Under the bill, if the state's IV-D agency [currently the Office of Child Support (OCS) within the Family Independence Agency] received a support payment that, at the time of its receipt, exceeded a payer's support amount plus an amount payable under an arrearage payment schedule, the IV-D agency would apply that excess amount against the payer's total arrearage accrued under all support orders under which that payer is obligated. If a balance remained, the IV-D agency would either immediately disburse that amount to the recipient (if the payer designates that balance as additional support) or retain the balance and disburse it to the payee when the balance is payable as support.

Liens. Under the act, any amount of support past due constitutes a lien against the payer's real and personal property, with certain exceptions. The bill would add that a lien against past due support would be subordinate to a prior perfected lien. In addition, before a lien was perfected, the IV-D agency would notify the payer of the imposition of the lien, and that his or her real property could be encumbered or seized if an arrearage accrues in an amount greater than the amount of periodic support payments. Furthermore, the IV-D agency or another person required to provide notice would provide the notification by paper, unless the person to be notified agreed to notification via another means. The IV-D agency or other person would

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complete and preserve proof of service in a manner similar to proof of service requirements under Michigan Court Rules.

Under the act, the Office of the Friend of the Court has the responsibility for imposing and perfecting a lien against child support arrearages. The bill would transfer this authority to the state's IV-D agency. Under the act, the Friend of the Court may perfect a lien on the real or personal property of a payer when the amount of the arrearage exceeds the amount of support payable for one year. The bill would allow the IV-D agency to perfect a lien when the arrearage exceeds the monthly amount of support. The IV-D agency would perfect a lien for an arrearage in the same manner in which another lien on similar property is perfected.

The bill would delete certain provisions pertaining to perfecting a lien in a case in which the support order was issued prior to August 10, 1998 (the effective date of the original section). The act requires the Friend of the Court to notify the payer when the lien has been perfected, and allows the payer 21 days after the date of the notification to request a review on the lien and proposed action. In addition, the Friend of the Court must schedule review within 14 days of the request. The bill would allow the payer 14 days to request a review, and would require that the review be conducted within 7 days of the request.

Financial Assets. Under the bill, if a payer's financial assets held in a financial institution were subject to a lien and an arrearage had accrued that exceeded the monthly amount of support, the IV-D agency could levy a lien against the payer's financial assets held by a financial institution. To levy a lien against the financial assets, the IV-D agency would notify the institution of the lien and levy, and direct the institution to freeze the payer's financial assets held at that financial institution. The OCS would, in consultation with the State Court Administrative Office, develop the form for the notification. The notification would include the levy amount; information that allows the financial institution to connect the payer with his or her financial assets; any IV-D agency contact information; and statements that explain the rights and responsibilities of the payer and the financial institution. The IV-D agency could withdraw a levy any time before the circuit court considered or heard the matter in an action. The IV-D agency would notify the payer and the financial institution of the withdrawal, at which time the financial institution would release the payer's financial assets.

Financial Institution Obligations. The bill states that a financial institution would not incur any obligation or liability to a depositor, account holder, or other person because it furnished information relating to a lien, or because it failed to disclose to a depositor, account holder, or other person that the name of a person was included in the information provided. In addition, the financial institution would not incur any obligation or liability to the IV-D agency or another person for an error or omission made in good faith.

Further, a financial institution would not incur any obligation or liability for freezing, blocking, placing a hold upon, forwarding, or otherwise dealing with a person's financial assets in response to a lien or levy imposed. In addition, a financial institution would not be obligated to block, freeze, place a hold upon, or forward a person's financial assets until it received notice of the levy.

Notification Received by the Financial Institution. When a financial institution received notice of a levy on a payer's financial assets, the institution would be required to freeze those assets. The financial institution would only freeze those assets up to the amount of the levy. If the financial institution received the notice before noon, the freeze would be executed the first business day after the business day on which the notice was received. If the notice were received at noon or later, the freeze would be executed on the second business day after the business day on which the notice was received. After the freeze was executed, the financial institution would notify the payer and the IV-D agency. The financial institution would include a copy of the IV-D agency notice in its notice to the payer.

Challenges to the levy. A payer whose financial assets were levied could challenge the levy by submitting a written challenge to the IV-D agency within 14 days after the financial institution sends the payer a copy of the IV-D agency notice. The challenge would be governed by the provisions of the act, and would not be subject to the Administrative Procedures Act of 1969 (Public Act 306 of 1969).

If the IV-D agency received a written challenge within the time required, the agency would notify the financial institution of the challenge and, within seven days, review the case with the challenger. The IV-D agency would only consider a mistake in the payer's identity, the amount of support past due, or another mistake of fact. If the agency determined that a mistake had indeed occurred, it would have to do one of the following:

- If there were a mistake in the payers identity or the payer did not owe past due support in an amount equal to or greater than the monthly amount of support, the agency would have to notify the financial institution and the payer that the levy was released.
- If the payer did owe past due support equal to or greater than the monthly amount, but the amount in the notice was more than the payer owes, the agency would notify the payer of the corrected amount.
- If there were a mistake in fact other than those listed above, the agency would have to take any appropriate action.

If the payer disagreed with the agency's review determination, he or she could file an action in the circuit court that issued the original support order. The payer would have to file the action within 14 days after the agency sent notice of its determination. In addition, the payer would have to notify the IV-D agency of the action. If an action were not filed within the required time, the IV-D agency would notify the financial institution and direct it to act in accordance with the agency's review determination. If the act were filed within the required time, the agency would notify the financial institution and direct it to act in accordance with the court's decision.

Financial Institution Responsibilities. A financial institution that received notice of a levy would forward money in the amount past due as stated in the notice (or the corrected amount) to the State Disbursement Unit (SDU) and any information necessary to identify the payer. Money would be forwarded not before the next day and not after the seventh day after one of the following takes place:

- The financial institution notifies the payer and the IV-D agency that the payer's financial assets are frozen and has yet to receive, within 21 days after the financial institution sent the notices, a notice from the IV-D agency that the payer has challenged the levy.
- The financial institution receives, within the time limit required, a notice from the IV-D agency that the payer has challenged the levy and receives another notice from the agency directing the financial institution to act in accordance with either the agency's review determination or the court's decision.

If the financial institution would be required to convert one or more financial assets to cash, in order to forward sufficient funds to the SDU, the institution would convert the assets and assess any resulting fees, costs, or penalties against the payer. If the payer did not have sufficient assets to pay the amount past due and any additional fees and other costs, the financial institution could deduct the fees, costs, and penalties and forward to remaining balance to the SDU.

Circuit Court Proceeding. If an action was filed with the circuit court within the required time limit, the circuit court would review the matter de novo (anew; a second time). The court's review would not be limited to mistakes of fact. The court would only address the appropriateness of the levy, and whether the levy amount is correct. The circuit court would not consider any evidence that is related to custody, parenting time, or the amount of the support order, and any other information that is not related to the levy against a payer's financial assets. Furthermore, the circuit court could not modify a support order. The bill specifies that a court finding regarding a monthly or past due support amount would not modify the underlying support order.

Disbursement of Funds. If, after a financial institution forwarded money to the SDU, all of the money was returned to the payer because of a mistake of fact or court order, the IV-D agency would reimburse the payer for any fees, costs, or penalties that were assessed by the financial institution. In addition, if the amount of the past due support the payer owed under all support orders subject to levy was more than the amount a financial institution forwarded to the SDU, the SDU would allocate the money on a proportional basis to all support orders subject to the levy.

License Suspension. Under the act, the Friend of the Court may petition the court to suspend a payer's occupational, driver's, recreational, or sporting license if the arrearage is greater than the amount payable for six months. The bill would allow license suspension if the arrearage is greater than the amount payable for one month of support.

In addition, the act requires the Friend of the Court to notify the payer that, among other things, the suspension order will be entered and sent to the licensing agency unless the payer responds by paying the arrearage or requesting a hearing within 21 days. The bill would require the payer to respond within 14 days.

MCL 552.602 et al.

Analyst: M. Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.