



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 1447 (as enrolled)
Senate Bill 1448 (as enrolled)
Senate Bill 1449 (as enrolled)
Senate Bill 1450 (as enrolled)
Sponsor: Senator Bev Hammerstrom (S.B. 1447)
Senator Bruce Patterson (S.B. 1448)
Senator Tony Stamas (S.B. 1449)
Senator Gerald Van Woerkom (S.B. 1450)
Committee: Families and Human Services

PUBLIC ACT 484 of 2004
PUBLIC ACT 483 of 2004
PUBLIC ACT 482 of 2004
PUBLIC ACT 481 of 2004

Date Completed: 1-18-05

RATIONALE

Approximately 600,000 Michigan children do not receive the level of child support to which they are entitled, and about 300,000 do not receive any support, according to a representative of the Attorney General. The arrearages owed to these children and the State amounts to more than \$7.0 billion. Although child support payments are deducted from a payer's regular paycheck, they are not deducted from specific awards to a support payer, such as an inheritance, insurance settlement, or legal or worker's compensation award. The State, however, may intercept a delinquent payer's tax refund and may place a lien on a payer's real or personal property, including money that already has been disbursed as a result of a settlement or award. Some people believe that more support will be distributed to recipients if a lien is placed on an award or settlement before the money is disbursed to the support payer; the State gives notice of delinquent support payers to the Child Support Lien Network (described below under **BACKGROUND**); and the Friend of the Court (FOC) is notified when a support payer receives an inheritance.

negligence, personal injury, or death; and funds due from a settlement, civil judgment, arbitration award, or worker's compensation award, subject to certain exceptions.

- Allow a Title IV-D agency to levy against a payer's worker's compensation amount in the same manner in which it may levy against a payer's financial assets held by a financial institution.
- Require a Title IV-D agency to notify the Child Support Lien Network (CSLN) when a payer's arrearage exceeds twice the monthly payment amount.
- Allow an insurance company to cooperate with a Title IV-D agency and the CSLN to identify people subject to child support arrearages who are entitled to certain liability insurance settlements or awards.
- Require a decedent's personal representative to notify the Friend of the Court of the identity of the decedent's surviving spouse, heirs, and devisees.

CONTENT

The bills amended various statutes to do all of the following:

- Provide that a lien on a support payer's property for past due support includes an inheritance; a claim for

Senate Bills 1447 and 1448 amend the Support and Parenting Time Enforcement Act; Senate Bill 1449 amended the Insurance Code; and Senate Bill 1450 amends the Estates and Protected Individuals Code (EPIC).

Senate Bill 1447 will take effect January 1, 2006. Senate Bills 1448 and 1450 will take effect on October 1, 2005. Senate Bill 1449 took effect December 28, 2004. Senate Bill 1450 was tie-barred to Senate Bill 1447.

(Title IV-D of the Federal Social Security Act requires states to have a program to secure child support from legal parents with the financial ability to pay. Each state must establish methods for locating absent parents, establishing paternity, and collecting child support payments. Title IV-D requires the state program to provide services to recipients of public assistance and to others, upon request.

The state agency that administers the child support program is designated as the Title IV-D agency. The Office of Child Support Services, within the Family Independence Agency (FIA), is Michigan's Title IV-D agency. Under the Support and Parenting Time Enforcement Act, however, "Title IV-D agency" means the agency in Michigan performing the functions under Title IV-D, and includes a person performing those functions under contract, including an FOC office or a prosecuting attorney.)

Senate Bill 1447

Under the Support and Parenting Time Enforcement Act, an amount of past due support that accrues under a judgment (a support order or court order in a domestic relations matter), or under the law of another state, constitutes a lien in favor of the support recipient against the real and personal property of the payer. Under the bill, the lien will include money to be paid as a distribution from a decedent's estate; as the result of a claim for negligence, personal injury, or death; under an arbitration award; under a settlement of or judgment issued in a civil action; or as compensation under a worker's compensation order, settlement, redemption order, or voluntary payment.

Currently, a support lien is not created against financial assets pledged to a financial institution as collateral or financial assets to which a financial institution has a prior right of setoff or other lien. Under the bill, a lien also will not be created against property or allowances described in Sections 2401 to 2404 of EPIC. (Sections 2401 to 2404 provide for a homestead allowance to a decedent's spouse and a family allowance

for the spouse and minor children, and exempt from an estate certain household property and personal effects.)

A lien also will not arise against 50% of the amount of compensation due to a payer under a worker's compensation order, settlement, redemption order, or voluntary payment.

In addition, a lien will not be created against money to be paid as a distribution from a decedent's estate, as the result of a claim for negligence, personal injury, or death, under an arbitration award, under a settlement of or judgment issued in a civil action, or as compensation under a worker's compensation order, settlement, redemption order, or voluntary payment, that is owed for any of the following:

- Attorney fees.
- Court costs and other litigation costs, including medical examination costs, expenses for reports, deposition fees, court reporter fees, and record copy fees.
- The Medicaid program under the Social Welfare Act, unless Medicaid is subordinated to child support under Federal law.
- Medical services or a reimbursement for a payment made for medical services either to or by an insurer, nonprofit health care corporation, or health maintenance organization.
- An amount to reimburse an insurance company for the expense it incurs in responding to a lien and levy under the Act, of \$50 or the actual expense for a single lien and levy, whichever is less, for each lien and levy or for each payment under a lien and levy.
- Other costs related to the arbitration, civil action, or worker's compensation order, or voluntary payment.
- For vocational rehabilitation costs, reimbursements, or credits incidental to long- or short-term disability programs or to pension or welfare benefit funds.
- For a Medicare set aside account for future medical care or for future Medicaid, unless Medicare or Medicaid is subordinated to child support under Federal law.
- Money to be paid under an insurance policy for the repair or replacement of real or tangible personal property.
- Money to be paid for allowable expenses that are payable as benefits under

Section 3107(1)(a) and for expenses under Section 3107(1)(c) of the Insurance Code.

- For reimbursements to which an employer or carrier is entitled under Section 827 of the Worker's Disability Compensation Act.

(Section 827 of the Worker's Disability Compensation Act provides for the recovery of damages from a third party (someone other than a coworker or the employer) who is liable for the injury to or death of an employee.

Under Section 3107(1)(a) of the Insurance Code, personal protection insurance benefits are payable for allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation. Under Section 3107(1)(c), personal protection insurance benefits are payable for expenses of up to \$20 per day that an injured person reasonably incurred in obtaining ordinary and necessary services in lieu of those that he or she would have performed during the first three years after the date of the accident if he or she had not been injured, not for income but for the benefit of himself or herself or his or her dependent.)

The bill specifies that the Title IV-D agency does not have the authority to alter an amount itemized in a redemption order. A lien that arises under the Support and Parenting Time Enforcement Act and a levy of that lien will affect only that portion of the payment due the payer under a redemption order. A carrier may not use the enforcement of a lien and levy under the Act as the bases for freezing or otherwise refusing to pay out an amount itemized in a redemption order that is not affected by the lien and levy.

The Act provides that, except for financial assets held by a financial institution, the Title IV-D agency may perfect a lien upon the real or personal property of a support payer when an arrearage exceeds twice the monthly amount of periodic support payments payable under the support order. Under the bill, the exception to that provision will apply to financial assets, money to be paid, or compensation described in the bill.

Under the Act, if a payer's financial assets held by a financial institution are subject to a support lien and an arrearage of twice the monthly amount of periodic support payments has accrued, the Title IV-D agency may levy against those assets. Under the bill, the Title IV-D agency also may levy against money to be paid by an insurer as the result of a claim for negligence, personal injury, or death; under an arbitration award; under a settlement of or judgment issued in a civil action; or compensation under a worker's compensation order, settlement, redemption order, or voluntary payment.

To levy against a payer's financial assets, the Title IV-D agency must serve the financial institution holding the assets with a notice of the lien and levy, directing the financial institution to freeze the payer's financial assets. Under the bill, to levy against a payer's financial assets, money to be paid, or compensation, the Title IV-D agency will have to serve notice on the financial institution, insurer, or carrier directing it to freeze the assets or funds.

When a financial institution receives a notice of levy on a payer's financial assets, the institution must freeze those assets. If the financial assets exceed the levy amount, the financial institution must freeze the assets up to the levy amount. Under the bill, this provision also will apply to a carrier with respect to funds owed pursuant to a worker's compensation order, settlement, or voluntary payment, and an insurer with respect to money to be paid as the result of a claim for negligence, personal injury, or death.

The Act also prescribes procedures for notifying a payer of levied financial assets, challenging a levy, forwarding money in the amount of past due child support, and paying reimbursement and compensation for levies made in error. Under the bill, these all will apply to funds owed to payers by carriers and insurers as well as financial assets of payers held by financial institutions.

Under the bill, "carrier" means that term as defined in the Worker's Disability Compensation Act or the Second Injury Fund or Self-Insurers' Security Fund created under that Act. (The Worker's Disability Compensation Act defines "carrier" as an

insurer or a self-insurer. "Insurer" means an organization that transacts the business of worker's compensation insurance within Michigan; "self-insurer" means either an individual employer authorized to carry its own risk or a group of employers who pool their liabilities as a group fund in a manner regulated under the Act.)

Under the Support and Parenting Time Enforcement Act, the Title IV-D agency must notify a payer that it has perfected a lien against his or her real or personal property. The payer may request a review on the lien and proposed action within 21 days after the notice is mailed. The notice must include specified information, including that, at the review, the payer may object to the lien and to proposed action based on a mistake of fact concerning the overdue support amount or the payer's identity. If, at the review, the payer establishes that the lien is not proper because of a mistake of fact, the Title IV-D agency must terminate the lien and within seven days notify the applicable entity that the lien is terminated. Under the bill, the Title IV-D agency either may terminate or modify the lien.

The bill requires the Title IV-D agency and the Worker's Compensation Agency, before January 31, 2006, to report to the standing committees of the Senate and House of Representatives with primary responsibility for legislation concerning child support enforcement on the status and efficacy of, and problems that have arisen in, the implementation of the bill's provisions and in the implementation of the related interagency agreement. Additionally, the Worker's Compensation Agency must report the effect that implementation has had on efficiency in the management of worker's compensation case settlements and redemptions.

Senate Bill 1448

The bill will require the Title IV-D agency to notify the CSLN, and allow the agency to notify at least one additional national child support information clearinghouse, of each payer who has a support arrearage in an amount exceeding twice the monthly amount of periodic support payments payable under the payer's support order.

Senate Bill 1449

The bill allows an insurer to cooperate voluntarily with a Title IV-D agency and the CSLN in identifying payers subject to child support arrearages who may be entitled to money to be paid under a liability insurance policy or the liability coverage portion of a multiperil insurance policy.

Senate Bill 1450

Under EPIC, a personal representative (the person administering an estate) must notify the decedent's heirs and devisees of his or her appointment, within 28 days of the appointment. Under the bill, except as otherwise provided, the personal representative also will have to notify the FOC of the county in which the estate is being administered of the identity of the decedent's surviving spouse and the heirs of an intestate estate and the devisees of a testate estate (i.e., the people who will inherit from a decedent who dies without a valid will or with a will). The personal representative will have to give this notice at the time of giving notice of his or her appointment.

A personal representative will incur no obligation or liability to the FOC or another person for an error or omission made in good faith compliance with the bill's notice requirement.

MCL 552.625a et al. (S.B. 1447)
MCL 552.24b (S.B. 1448)
MCL 500.418 (S.B. 1449)
700.3705 (S.B. 1450)

BACKGROUND

According to information on the Child Support Lien Network's website (<http://www.childsupportliens.com>), the network was established in 1999 by the State of Rhode Island and MAXIMUS, Inc. It combines data from various states' delinquent child support obligor records into one database for the purpose of intercepting insurance settlements owed to delinquent child support obligors (individuals obligated to pay child support).

Participating states pool their delinquent child support obligor information in the CSLN, and the database is matched electronically on a daily basis with claims

filed with insurance companies across the country. If a claim matches a delinquent obligor, the insurer gives CSLN the claim information and company contacts, and CSLN alerts the member state. The state then follows up with the insurance company to file the appropriate lien or income withholding order against the future settlement.

At least 18 states currently participate in the CSLN, but Michigan is not among them. In order to join the CSLN, states outside of New England must execute an interstate agreement with Rhode Island.

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

The bills will provide the State with additional tools to collect past due child support. Many noncustodial parents with child support arrearages simply do not have the means to pay what they owe. The bills will help ensure that the Title IV-D agency is notified when a payer has a change in fortune due to one of the specified windfalls, enabling the agency to intercept the payment and distribute the money to the children who deserve it.

Currently, liens may be placed on awards and settlements specified in Senate Bill 1447 *after* the money has been distributed. The bill will improve the efficiency of the child support system by allowing the FIA to perfect a lien on the award or settlement *before* it is distributed to the support payer.

Senate Bill 1448 will facilitate information-sharing in multistate support cases by requiring the State to notify the CSLN of support payers who are at least two months behind. The CSLN asserts that approximately 30% of delinquent payers nationwide do not live in the same state as their children. States that do not participate in the CSLN must make individual requests for insurance information for specific payers from an insurance company's multiple offices. Often, child support agencies become aware of a delinquent payer's claim settlement by happenstance, after it is too late to take action. The CSLN, however, is an automated database of millions of

delinquent obligors and insurance settlement files that is updated daily. Requiring the Title IV-D agency to notify the CSLN when a payer is at least two months behind in payments will help identify payers who are to receive insurance settlements.

The system will be further enhanced by Senate Bill 1449, which will encourage insurance companies to cooperate with the FIA and the CSLN to identify delinquent payers who are to receive settlements. According to the CSLN, redirecting insurance awards to a delinquent payer's children can eliminate the arrearage or reduce it to a more manageable amount, enabling the payer to pay off the remainder and meet his or her obligation each month.

Finally, Senate Bill 1450 will require a decedent's personal representative to notify the FOC of the estate's heirs or devisees. Like the information provided by an insurance company to the CSLN, this information will help FOC offices divert a delinquent payer's money to his or her children.

Opposing Argument

Worker's compensation awards provide only partial wage compensation. Senate Bill 1447 allows for half of an already reduced paycheck to be taken away. In order to avoid being driven into further financial hardship and amassing even larger support arrearages, injured workers might demand larger settlements from their employers.

Response: The focus of the bill is making sure that children receive the support to which they are legally entitled. In addition to 50% of a worker's compensation settlement, the bill exempts various amounts, such as certain medical expenses, from the lien process. It is not fair for a child who has not been getting any support to continue to receive no support simply because his or her parent is injured and experiences an income reduction.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bills 1447 and 1448

The bills will have an indeterminate fiscal impact on the State. The bills will expand the Child Support Program's use of liens in the collection of child support arrearages.

The September 2004 Program audit report recommended amendatory legislation "...to provide for a practical method of using liens on real and nonfinancial personal property to effect collection of child support arrearages". The audit report indicated that in 99% of the sample cases reviewed, the FOC did not attempt to perfect liens on payers' property because of the inability to identify such property efficiently. It is not certain exactly how many cases will be affected and the fiscal impact cannot be determined at this time.

Senate Bills 1449 and 1450

The bills will have no fiscal impact on State or local government.

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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.