

Act No. 484
Public Acts of 2004
Approved by the Governor
December 21, 2004
Filed with the Secretary of State
December 28, 2004
EFFECTIVE DATE: January 1, 2006

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

Introduced by Senator Hammerstrom

ENROLLED SENATE BILL No. 1447

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 25a, 25b, 25c, 25d, 25e, 25f, 25g, 25h, and 25i (MCL 552.625a, 552.625b, 552.625c, 552.625d, 552.625e, 552.625f, 552.625g, 552.625h, and 552.625i), sections 25a and 25b as amended and sections 25c, 25d, 25e, 25f, 25g, 25h, and 25i as added by 2002 PA 565.

The People of the State of Michigan enact:

Sec. 25a. (1) The amount of past due support that accrues under a judgment as provided in section 3 or under the law of another state constitutes a lien in favor of the recipient of support against the real and personal property of a payer, including, but not limited to, 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. The lien is effective at the time that the support is due and unpaid and shall continue until the amount of past due support is paid in full or the lien is terminated by the title IV-D agency.

(2) Liens that arise in other states shall be accorded full faith and credit when the requirements of section 25b or 25c are met.

(3) A lien created under subsection (1) is subordinate to a prior perfected lien. All liens that arise under subsection (1) and described in subsection (2) have equal priority.

(4) Before a lien is perfected or levied under this act, the title IV-D agency shall send a notice to the payer subject to the support order informing the payer of the imposition of liens by operation of law and that the payer's real and personal property can be encumbered or seized if an arrearage accrues in an amount that exceeds the amount of periodic support payments payable under the payer's support order for the time period specified in this act.

(5) The title IV-D agency or another person required to provide notice under this section or sections 25b to 25i shall provide notice by paper, unless the person to be notified agrees to notice by other means. The title IV-D agency or other person providing notice under this section or sections 25b to 25i shall complete and preserve proof of service of the notice in a form substantially conforming to the requirements for proof of service under the Michigan court rules.

(6) A lien under subsection (1) does not arise against any of the following:

(a) A financial asset pledged to a financial institution as collateral.

(b) A financial asset to which a financial institution has a prior right of setoff or other lien.

(c) Property or an allowance described in sections 2401 to 2404 of the estates and protected individuals code, 1998 PA 386, MCL 700.2401 to 700.2404.

(d) Fifty percent of the amount of compensation due to a payer under a worker's compensation order, settlement, redemption order, or voluntary payment.

(e) That portion of 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:

(i) Attorney fees.

(ii) Court costs and other litigation costs, including, but not limited to, medical examination costs, expenses for reports, deposition fees, court reporter fees, and record copy fees.

(iii) The medicaid program under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, unless medicaid is subordinated to child support under federal law.

(iv) Medical services or a reimbursement for a payment made for medical services either to or by an insurer, health maintenance organization, or nonprofit health care corporation. For the purposes of compensation under a worker's compensation order, settlement, redemption order, or voluntary payment, as used in this subparagraph, "medical services" means services as described and regulated under sections 315 and 319 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.315 and 418.319, and the rules promulgated under those sections.

(v) An amount to reimburse an insurance company for the expense incurred by the insurance company in responding to a lien and levy under sections 25b to 25i. A reimbursement amount under this subparagraph shall not exceed the actual expense or \$50.00, whichever is less, for each lien and levy or for each payment under a lien and levy.

(vi) Other costs related to the arbitration, civil action, or worker's compensation order, settlement, redemption order, or voluntary payment.

(vii) For reimbursements to which an employer or carrier is entitled under section 827 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.827.

(viii) For vocational rehabilitation costs, reimbursements, or credits incidental to long- or short-term disability programs or to pension or welfare benefit funds.

(ix) 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.

(f) Money to be paid under an insurance policy for the repair or replacement of real or tangible personal property.

(g) 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 of 1956, 1956 PA 218, MCL 500.3107.

(7) The title IV-D agency does not have the authority to alter an amount itemized in a redemption order. A lien that arises under this act and a levy of that lien only affect that portion, as prescribed in this section, of the payment due the payer under a redemption order. A carrier shall not use the enforcement of a lien and levy under this act as the basis for freezing or otherwise refusing to pay out an amount itemized in a redemption order that is not affected by the lien and levy under this act.

(8) As used in this section and sections 25b to 25i:

(a) "Carrier" means any of the following:

(i) "Carrier" as that term is defined in section 601 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.601.

(ii) A fund created under section 501 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.501.

(iii) The property and casualty guaranty association required to be maintained by section 7911 of the insurance code of 1956, 1956 PA 218, MCL 500.7911.

(b) "Insurer" means that term as defined in section 106 of the insurance code of 1956, 1956 PA 218, MCL 500.106.

Sec. 25b. (1) A remedy provided by this section is cumulative and does not affect the availability of another remedy under this act or other law.

(2) Except for a financial asset, money to be paid, or compensation to which section 25c applies, the title IV-D agency may perfect a lien created under section 25a upon the real or personal property of the payer when an arrearage has accrued in an amount that exceeds 2 times the monthly amount of periodic support payments payable under the payer's support order.

(3) If the arrearage under subsection (2) is reached and the title IV-D agency has determined that the delinquent payer holds real or personal property, other than a financial asset, money to be paid, or compensation to which section 25c

applies, the title IV-D agency may perfect the lien. The title IV-D agency shall perfect a lien on property to which this section applies in the same manner in which another lien on property of the same type is perfected.

(4) The title IV-D agency shall notify the payer when the title IV-D agency has perfected a lien against real or personal property of the payer. The notice shall be sent by ordinary mail to the payer's last known address, and a copy of the notice shall be sent by ordinary mail to the recipient of support. A notice under this subsection shall include all of the following:

(a) The amount of the arrearage.

(b) That a lien is in effect on the real or personal property of the payer.

(c) That the property is subject to seizure unless the payer responds by paying the arrearage or requesting a review within 21 days after the date of mailing the notice.

(d) 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.

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

(5) Within 21 days after the date on which the notice described in subsection (4) is mailed to a payer, the payer may request a review on the lien and the proposed action. If the payer requests a review under this subsection, the title IV-D agency shall conduct the review within 14 days after the date of the request.

(6) If, at the review, the payer establishes that the lien is not proper because of a mistake of fact, the title IV-D agency shall terminate or modify the lien and, within 7 days, notify the applicable entity that the lien is terminated against all or a portion of the property.

(7) If the payer fails to request a review, to appear for a review, or to establish a mistake of fact, the title IV-D agency may collect the arrearage by levy upon any property belonging to the payer as provided in this section. The title IV-D agency shall notify the payer at the review or by written notice of its intent to levy.

(8) To enforce a lien on real property or personal property, the title IV-D agency may sell the real property in the manner provided by law for the judicial foreclosure of mortgage liens; apply to the circuit court for an order to execute the judgment, to appoint a receiver of the real and personal property subject to the lien, and to order the property and its income to be applied to the amount of the judgment; or take any other appropriate action to enforce the judgment. The title IV-D agency shall mail a copy of orders under this subsection to the payer and recipient of support at his or her last known address.

(9) A payer may request that the title IV-D agency terminate a lien against the real and personal property of the payer on the basis that the payer is no longer in arrears. If the payer is no longer in arrears, the title IV-D agency shall terminate the lien in accordance with law.

(10) An entity is not liable under any federal or state law to any person for any disclosure of information to the title IV-D agency under this section or for any other action taken in good faith to comply with the requirements of this section.

Sec. 25c. (1) A remedy provided by this section is cumulative and does not affect the availability of another remedy under this act or other law.

(2) If an arrearage has accrued in an amount that exceeds 2 times the monthly amount of periodic support payments payable under a payer's support order, the title IV-D agency may levy against any of the following items subject to a lien under section 25a to which the payer is entitled:

(a) Financial assets held by a financial institution.

(b) Money to be paid by an insurer as the result of a claim for negligence, personal injury, or death, under an arbitration award, or under a settlement of or judgment issued in a civil action.

(c) Compensation under a worker's compensation order, settlement, redemption order, or voluntary payment.

(3) To levy against a payer's financial assets, money to be paid, or compensation, the title IV-D agency shall serve the financial institution holding the financial assets, the insurer, or the carrier with a notice of the lien and levy, directing the financial institution, insurer, or carrier to freeze those financial assets or that money or compensation. The office of child support, in consultation with the state court administrative office, shall create the form that is required for the notice to a financial institution, insurer, or carrier under this subsection. The form shall include, or provide for inclusion of, at least all of the following:

(a) The levy amount.

(b) Information that enables the financial institution, insurer, or carrier to link the payer with his or her financial assets, money to be paid, or compensation and to notify the payer.

(c) Information on how to contact the title IV-D agency.

(d) Statements setting forth the rights and responsibilities of the financial institution, insurer, or carrier and payer.

(4) A title IV-D agency may withdraw a levy under this section at any time before the circuit court considers or hears the matter in an action filed under section 25f. The title IV-D agency shall give notice of the withdrawal to the payer and financial institution, insurer, or carrier. Upon receiving notice of a withdrawal of a levy, the financial institution, insurer, or carrier shall release the payer's financial assets, money to be paid, or compensation by the close of business on 1 of the following days:

(a) If the notice is received before noon, the first business day after the business day on which the notice is received.

(b) If the notice is received at noon or later, the second business day after the business day on which the notice is received.

Sec. 25d. (1) A financial institution, insurer, or carrier incurs no obligation or liability to a depositor, account holder, or other person arising from the furnishing of information under sections 25c to 25i or from the failure to disclose to a depositor, account holder, or other person that the person's name as a person with an interest in the financial assets, money to be paid, or compensation was included in the information provided.

(2) A financial institution, insurer, or carrier incurs no obligation or liability to the title IV-D agency or another person for an error or omission made in good faith compliance with sections 25c to 25i.

(3) A financial institution, insurer, or carrier incurs no obligation or liability for blocking, freezing, placing a hold upon, forwarding, or otherwise dealing with a person's financial assets, money to be paid, or compensation in response to a lien or levy imposed or information provided under sections 25c to 25i.

(4) A financial institution, insurer, or carrier is not obligated to block, freeze, place a hold upon, forward, or otherwise deal with a person's financial assets, money to be paid, or compensation until served with the notice of levy in accordance with section 25c. A financial institution, insurer, or carrier that forwards financial assets, money to be paid, or compensation to the title IV-D agency in response to a levy under section 25c is discharged from any obligation or liability to the depositor, account holder, or other person with an interest in the financial assets, money to be paid, or compensation forwarded to the title IV-D agency.

Sec. 25e. (1) When a financial institution, insurer, or carrier receives a notice of levy under section 25c on a payer's financial assets held by the financial institution; money to be paid by an insurer as the result of a claim for negligence, personal injury, or death, under an arbitration award, or 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, the financial institution, insurer, or carrier shall freeze those financial assets, money to be paid, or compensation. If the payer's financial assets, money to be paid, or compensation exceeds the levy amount, the financial institution, insurer, or carrier shall freeze those financial assets, or that money to be paid or compensation, up to the levy amount. A financial institution, insurer, or carrier shall execute the freeze of a payer's financial assets, money to be paid, or compensation under this section by the close of business on 1 of the following days:

(a) If the notice is received before noon, the first business day after the business day on which the notice is received.

(b) If the notice is received at noon or later, the second business day after the business day on which the notice is received.

(2) After complying with subsection (1), a financial institution, insurer, or carrier shall give notice of that compliance to the title IV-D agency and the payer. In addition, a financial institution shall notify each other person with an interest in the financial assets as shown in the financial institution's records. A financial institution's, insurer's, or carrier's notice to a payer under this subsection shall include a copy of the title IV-D agency notice to the financial institution, insurer, or carrier.

Sec. 25f. (1) A payer whose financial assets are, or money to be paid or compensation is, levied on under section 25c or another person with an interest in the financial assets may challenge the levy by submitting a written challenge with the title IV-D agency at the location specified in the title IV-D agency notice. A payer, or other person with an interest in the financial assets, must submit a written challenge under this section within 21 days after the financial institution, insurer, or carrier sends the payer a copy of the title IV-D agency notice as required by section 25e. A challenge to a levy under section 25c is governed by this act and is not subject to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. A payer, or other person with an interest in the financial assets, who submits a challenge under this subsection may withdraw the challenge at any time by giving notice of the withdrawal to the title IV-D agency.

(2) If the title IV-D agency receives a written challenge from a payer, or other person with an interest in the financial assets, within the time limit required by subsection (1), the title IV-D agency shall notify the financial institution, insurer, or carrier about the challenge and, within 7 days, shall review the case with the challenger. The title IV-D agency shall consider only a mistake in the payer's identity or in the amount of the payer's past due support,

or another mistake of fact, as cause to release or modify the levy. If the title IV-D agency determines that a mistake of fact occurred, the title IV-D agency shall do 1 of the following:

(a) If the mistake is the payer's identity or that the payer does not owe past due support in an amount equal to or greater than 2 times the payer's monthly support amount under a support order, notify the financial institution, insurer, or carrier and the payer that the levy is released.

(b) If the payer does owe past due support in an amount equal to or greater than 2 times the payer's monthly support amount under a support order, but the amount in the notice to levy is more than the payer owes, notify the payer of the corrected amount.

(c) If the mistake concerns a fact other than those described in subdivisions (a) and (b), take action appropriate to the mistake.

(3) If the title IV-D agency finds no mistake of fact, the title IV-D agency shall notify the payer or other person with an interest of that finding.

(4) If the payer, or other person with an interest in the financial assets, disagrees with the title IV-D agency review determination under this section, the payer or other person with an interest may challenge the levy under section 25c by filing an action in the circuit court that issued a support order that is an underlying basis for the levy. A payer, or other person with an interest in the financial assets, must file an action under this subsection within 21 days after the title IV-D agency sends notice of its review determination and shall give the title IV-D agency notice of the action.

(5) If an action is not filed in the circuit court within the time limit required by subsection (4), the title IV-D agency shall notify the financial institution, insurer, or carrier, directing the financial institution, insurer, or carrier to act in accordance with the title IV-D agency review determination under this section. If an action is filed in the circuit court within the time limit prescribed in subsection (4), the title IV-D agency shall notify the financial institution, insurer, or carrier, directing the financial institution, insurer, or carrier to act in accordance with the court decision.

Sec. 25g. (1) A financial institution, insurer, or carrier that receives a notice of levy under section 25c shall forward money in the amount of past due support as stated in the notice, or in the corrected amount if notified of a corrected amount, to the state disbursement unit, along with information necessary to identify the payer as required by the notice.

(2) A financial institution, insurer, or carrier shall forward money as required by subsection (1) no sooner than the next day and no later than the seventh day after 1 of the following takes place:

(a) The financial institution, insurer, or carrier notifies the payer and the title IV-D agency that the payer's financial assets are, or money to be paid or compensation is, frozen as required by section 25e and has not received, within 28 days after the day on which the financial institution, insurer, or carrier sent the notices, a notice from the title IV-D agency that the payer, or another person with an interest in the payer's financial assets, has submitted a challenge to the levy under section 25f.

(b) The financial institution, insurer, or carrier receives, within the time limit prescribed in subdivision (a), a notice from the title IV-D agency that the payer, or another person with an interest in the payer's financial assets, submitted a challenge to the levy and receives the subsequent title IV-D agency notice required by section 25f, directing the financial institution, insurer, or carrier to act in accordance with either the title IV-D agency review determination or the circuit court decision.

(3) If, in order to forward sufficient money to the SDU, the financial institution must convert 1 or more financial assets to cash, the financial institution shall execute the conversion, assessing a resulting fee or other cost or penalty against the payer. If the payer's financial assets are insufficient to pay the past due support amount plus resulting fees and other costs or penalties, the financial institution may deduct the fees, costs, and penalties before forwarding the balance of the money.

Sec. 25h. (1) If an action is filed in circuit court within the time limit prescribed in section 25f, the circuit court shall review the matter de novo. The action is governed by this section and the Michigan court rules. The circuit court review is not limited to mistakes of fact.

(2) All of the following apply in an action governed by this section:

(a) The circuit court shall only address the issues of the propriety of the levy and whether the levy amount is correct.

(b) The circuit court shall not admit evidence or consider an issue that is related to custody, parenting time, or the amount of support under a support order unless that evidence is related to the levy against a payer's financial assets, money to be paid, or compensation.

(c) The circuit court shall not modify a support order. A court finding regarding a monthly or past due support amount does not modify the underlying support order.

Sec. 25i. (1) If, after a financial institution forwards money to the state disbursement unit, all of the forwarded money is returned to the payer due to a mistake of fact or court order, the title IV-D agency shall reimburse the payer

for a fee, cost, or penalty that the financial institution assessed against the payer under section 25g. The title IV-D agency shall also compensate the payer for the amount of interest that the financial assets would have earned had they not been converted and forwarded to the SDU, to the extent that the interest can be determined with a reasonable degree of certainty.

(2) If the total amount of past due support the payer owes under all support orders subject to levy under section 25c is more than the amount of money a financial institution, insurer, or carrier forwards the SDU under section 25g, the SDU shall allocate the money among those support orders by multiplying the total amount of money forwarded by the percentages arrived at by dividing the past due support amount under each of those support orders by the total of the past due support amounts under all of those support orders.

Enacting section 1. This amendatory act takes effect January 1, 2006.

Enacting section 2. Before January 31, 2006, the title IV-D agency and the worker's compensation agency shall report to the standing committees of the senate and house of representatives with primary responsibility for legislation concerning child support enforcement on the status of, efficacy of, and problems that have arisen in the implementation of the provisions of the support and parenting time enforcement act that were amended or added by this amendatory act and in the implementation of the related interagency agreement. In addition, the worker's compensation agency shall report to those same standing committees the effect that implementation has had on efficiency in the management of worker's compensation case settlements and redemptions.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor