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SUPPORT ORDERS: INCOME WITHHOLDING

House Bill 5937 (Substitute H-2)
House Bill 5938 (Substitute H-1)
House Bill 6192 as introduced
House Bill 6193 (Substitute H-1)
House Bills 6194-6196 as introduced

First Analysis (11-14-90)
Sponsor: Rep. David M. Gubow
Committee: Judiciary

THE APPARENT PROBLEM:

At present, a person who must pay family support is not necessarily subject to income withholding, although withholding is required after payments fall four weeks in arrears. However, under recent changes in federal regulation under the Family Support Act of 1988, the state's child support enforcement plan must provide for immediate withholding of child support payments, effective November 1, 1990. Failure to comply with the requirement can result in formal disapproval of the state plan, subjecting the state to substantial penalties in the form of reduced federal funding for child support and other programs. The Department of Social Services (DSS) estimates that Michigan would stand to lose about \$12 million per quarter in child support funding, with additional penalties possible in Aid to Dependent Children (ADC) funding for failure to comply with the Social Security Act's requirement to have an approved child support program. The department estimates that ADC-related penalties would be at least \$5 million in the first year. To prevent the imposition of federal penalties, and to meet reporting requirements contained in federal regulations proposed under the federal act, amendments have been developed for the various statutes affecting orders of support.

THE CONTENT OF THE BILLS:

House Bill 5937 would amend the Support and Visitation Enforcement Act (MCL 552.604 et al.) to provide for an order of income withholding in a support order entered or modified after December 31, 1990 generally to take effect immediately. The court could order otherwise if it found that immediate withholding would not be in the best interests of the child, there had been no tardiness with previously ordered support, and the payer agreed to keep the Friend of the Court (FOC) informed of the name and address of his or her current source of income, along with any health care coverage. Neither would immediate withholding be required if the parties entered into a written agreement that provided an alternate payment arrangement, rejected immediate income withholding, and required the payer to keep the FOC informed of the current source of income and any health care coverage. However, there could be no agreement to avoid immediate income withholding if the recipient of the support was a recipient of public assistance or if there was an arrearage payable to the state. Generally, an order for immediate income withholding contained in an ex parte interim support order would take effect 14 days after the order had been served, unless the opposite party filed a written objection during that 14-day period. An order of income withholding that did not have to take effect immediately, and orders of income withholding in support orders issued on or before December 31, 1990, would

take effect when provisions on notice and hearing on arrearages were met.

The bill would require employers and other "sources of income" to identify each withholding by payer, payer's social security number, case number, amount withheld, and the date on which support was withheld from the payer's income. An employer would have to provide its federal employer identification number to the FOC.

The bill would require the court to suspend or terminate an order of income withholding when the parties made a written agreement that provided for an alternative payment arrangement and required the payer to keep the FOC informed of his or her current source of income and any health care coverage. There could be no such agreement when there was a support arrearage or the recipient of support was a recipient of public assistance. With such agreements, income withholding would take effect when provisions on notice and hearing on arrearages were met.

The bill would repeal a section of law that provides for an employer to receive fifty cents for each payment made to the FOC (that payment is paid to the employer from the amount due the employee).

The bill could not take effect unless House Bill 5938 was enacted.

House Bill 5938 would amend the Friend of the Court Act (MCL 552.511) to replace language calling for the Office of Child Support to mail a notice when a fixed amount of arrearage is reached with language requiring the office to "initiate enforcement." The applicable amount of arrearage may not be greater than that equal to four weeks of payments under the payer's support order; the bill would instead limit the amount of arrearage to one month's worth of support. The bill could not take effect unless House Bill 5937 was enacted.

House Bills 6192 through 6196 would amend various acts to insert language requiring each child support order to require each party to keep the office of friend of the court informed of any health care coverage and the name and address of the party's current source of income. The requirement would apply to support orders entered or modified after January 1, 1991. House Bill 6192 would amend the divorce law (MCL 551.15 et al.), House Bill 6193 would amend the Family Support Act (MCL 552.452 et al.), House Bill 6194 would amend the Child Custody Act (MCL 722.27), House Bill 6195 would amend the Paternity Act (MCL 722.717), and House Bill 6196 would amend the emancipation of minors act (MCL 722.3).

OVER

FISCAL IMPLICATIONS:

According to the Department of Social Services, failure to enact provisions for immediate income withholding in accordance with federal regulations would subject the state to about \$12 million per quarter in federal penalties that eliminate federal funding for the child support program for each quarter in which the state plan is determined to be "disapproved." The state also would be subject to a quarterly reduction in federal Aid to Dependent Children (ADC) funding that the DSS estimates would be at least \$5 million in the first year. (11-1-90)

ARGUMENTS:

For:

The bills would enact good public policy by putting into law a presumption for immediate income withholding for support payments and by requiring support orders to require parties to provide information on sources of income and availability of medical coverage. The bills thus would increase collections, improve enforcement efficiency, and eliminate the stigma that now may attach to income withholding based on arrearages. Especially persuasive is the prospect of substantial federal penalties for failure to provide for immediate withholding in the manner required by federal law; should the state child support plan be formally disapproved, the state would stand to lose about \$12 million per quarter in child support funding alone. Federal sanctions aside, though, the bills would be advantageous to the children who are the beneficiaries of support payments; to the state, which could recover more in support payments redirected to the state to offset public assistance; and to the Friends of the Court, who, by spending less time dealing with withholding orders, will be better able to serve their clients.

Against:

Payers of support object to the bills on several grounds. First, they dispute the necessity of them, noting that Michigan already has a good record of collections on support. They especially object to provisions for immediate income withholding, pointing out that withholding orders now bear a stigma, and would continue to do so, thus punishing people without regard for their payment record. Further, if income withholding is to be put into effect for everyone, it is argued, there should be some way of automatically initiating procedures for a reduction in support upon a change in financial circumstances; otherwise, full support payments would continue unacceptably long for someone who had been laid off and was having support withheld from unemployment checks.

Response: House Bill 5937 would allow exceptions to be made to immediate income withholding. For example, the parties could agree to another arrangement, or the court could excuse the payer for good cause.

Against:

The bills would increase demands on employers, who may object to increases in statutory reporting requirements, especially when accompanied by the elimination of the fifty cents per payment that each employer may now receive as compensation for effecting income withholding.

Response: The amount of money involved is minimal for employers. In fact, committee testimony suggested that relatively

few employers are charging the fee. On the other hand, to retain the fee would mean that payers who receive more frequent paychecks and who are generally lower-income workers would have to pay more in support fees than payers who are paid less frequently.

POSITIONS:

The Department of Social Services supports the bills. (11-13-90)

The Michigan Family Support Council supports the concept of the bills, but does not have a formal position on them, pending review of the substitute bills. (11-13-90)

Fathers for Equal Rights opposes and disputes the necessity of provisions requiring automatic income withholding and notification of source of income when there is no history of arrearages, and does not oppose provisions requiring notification of health care coverage. (11-13-90)