

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 698 (as enrolled)

Senate Bill 715 (as enrolled)

Sponsor: Senator Rudy J. Nichols (S.B. 698)

Senator Christopher D. Dingell (S.B. 715)

Senate Committee: Judiciary

House Committee: Judiciary

PUBLIC ACT 354 of 1990PUBLIC ACT 241 of 1990

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Date Completed: 1-17-91

RATIONALE

Recent revisions in Federal regulations pertaining to income withholding pursuant to out-of-state support orders reportedly mandate that each state designate a central registry for interstate support orders and that the Office of the Friend of the Court (FOC) in the county in which a support order was entered or in which the obligee (i.e., a person due support payments) or obligor (i.e., a person required to pay support pursuant to a court order) lives request an agency in another jurisdiction to order income withholding. Some people feel that Michigan should amend its laws that relate to enforcement of out-of-state support to bring them into compliance with Federal regulations.

In addition, under the Federal Family Support Act, the State must establish a rebuttable presumption that the amount of child support yielded under the State's child support formula is the correct amount of child support to be awarded. The presumption may be rebutted by a finding (in writing or on the record) that application of the formula would be "unjust or inappropriate" in a particular case. Public Acts 273 through 279 of 1989 amended various laws to establish such a rebuttable presumption in Michigan law, but the Federal Department of Health and Human Services (HHS) reportedly has notified Michigan's Department of Social Services (DSS) of deficiencies in the 1989 Acts. Evidently, the HHS disapproved of allowing parties to a support settlement to agree to an amount of support that is inconsistent with the formula, without requiring the court to specify in writing or on the record why the application of the formula would be "unjust or

inappropriate". A state that fails to meet the Federal requirements is subject to financial penalties. Reportedly, Michigan could suffer penalties of up to \$58 million if it fails to comply with the Federal law. Some believe that the laws amended by Public Acts 273 through 279 should again be revised to require courts to specify, in all cases of deviation from the formula, the reasons why application of the child support formula would be "unjust or inappropriate".

CONTENT

Senate Bill 698 would amend the Interstate Income Withholding Act to require that, when the FOC requested an agency in another jurisdiction to order the withholding of an obligor's income for the purposes of enforcing a support order, the request be made by the FOC in the county in which the support order was entered or, if there were no such order, in the county in which the obligee or obligor lived. Any documentation relating to a request to order income withholding that was transmitted to an agency in another jurisdiction also would have to be filed with the clerk of the court. The bill also would require the FOC to receive, record, disburse, and monitor payments made under an order to withhold income. A court could not require the payment of a filing fee or other costs from the obligee.

Senate Bill 715 would designate the

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Department of Social Services' Office of Child Support as Michigan's "interstate central registry" and authorize the FOC to coordinate support payments made pursuant to a foreign support order (i.e., one issued by a state other than Michigan). "Interstate central registry" would mean the entity designated pursuant to Federal regulations that was "responsible for receiving, reviewing, forwarding, and responding to inquiries about interstate child support actions".

Interstate Central Registry

Under the Revised Uniform Reciprocal Enforcement of Support Act, if a court in one state determines that a court of another state may obtain jurisdiction of an obligor or the obligor's property, the initiating court must send a copy of the Act and three copies of the support petition to the court in the responding state. The bill, instead, would require that an initiating court send "a completed forms package" and a copy of the Act to the responding state's interstate central registry. The registry then would have to forward the documents to the proper court. In addition, the Act requires an obligee seeking to register a foreign support order in a Michigan court to transmit three copies of the order to the clerk of the Michigan court. The bill specifies that this transmittal would have to be done through the interstate central registry.

The bill also would delete from the list of duties and responsibilities of the Office of Child Support the requirement to compile an annual list of addresses of Michigan courts that have jurisdiction under the Act and to transmit that list to the state information agencies of other states that have adopted the Act or one substantially similar to it. The requirement that the Office maintain a register of similar lists received from other states and transmit those lists to Michigan courts would be replaced by a requirement to maintain a list of all the interstate central registries in the United States and provide that list to every Michigan prosecutor's office and FOC office.

Friend of the Court

If there were no Michigan support order, but a foreign support order existed, upon the request

of either the obligee or the DSS if support had been assigned to it, the FOC in the Michigan county in which the obligee resided would have to "inform the source of the support payments to transmit the payments" to the FOC. The bill would require the FOC to receive, record, disburse, and monitor payments made pursuant to a foreign support order, and to file a copy of the foreign support order with the court clerk. The filing of the support order would not be considered a registration of the foreign support order by the obligee as is required under the Act.

Deviation From Child Support Formula

The bill would allow a court to enter a child support order, agreed to by the parties, that deviated from the child support formula, provided that the requirements for deviation from the formula were met. The court would have to determine from the facts of the case that application of the formula would be "unjust or inappropriate" and set forth in writing or on the record all of the following:

- The formula-determined amount of support.
- How the support order would deviate from the formula.
- The value of any property or other support that would be awarded in lieu of the payment of child support, if applicable.
- The reasons why application of the formula would be "unjust or inappropriate".

Currently, an agreement by the parties to deviate from the formula is sufficient reason for a court to order a different amount of payment.

MCL 552.675 (S.B. 698)
780.153a et al. (S.B. 715)

FISCAL IMPACT

Senate Bill 698 would have no fiscal impact on State or local government.

Senate Bill 715 would bring Michigan into compliance with one requirement of the Federal Family Support Act under which states must establish a rebuttable presumption that the amount of child support yielded under the State formula is the correct amount to be awarded.

States may be subjected to Federal financial sanctions for failing to meet the mandates of that Act. Michigan receives approximately \$58 million in Federal funds for child support-related activities. By failing to comply with the Federal mandate, Michigan could risk losing some or all of the \$58 million. Complying with the Federal law would impose no added costs on the courts.

ARGUMENTS

Supporting Argument

The bills would bring Michigan into compliance with Federal regulations relating to the enforcement of foreign support orders and would improve the efficiency of the FOC in enforcing such orders.

Supporting Argument

In response to Federal complaints, Senate Bill 715 would refine language enacted in 1989 that was designed to bring Michigan into compliance with Federal law relating to entering support orders that deviate from the State's child support formula. Compliance with the Federal requirements would allow Michigan to avoid the possibility of being subjected to large Federal financial sanctions.

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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.