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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 902 (as enrolled)

Senate Bill 903 (as enrolled)

Senate Bill 904 (as enrolled)

Senate Bill 905 (as enrolled)

Senate Bill 906 (as enrolled)

Sponsor: Senator Rudy J. Nichols (Senate Bills 902 and 904)

Senator Harmon Cropsey (Senate Bills 903, 905, and 906)

Senate Committee: Judiciary

House Committee: Judiciary

Date Completed: 1-17-91

RATIONALE

Although the divorce law states that a court, under exceptional circumstances, may order support for a child after he or she turns 18 years old, the Michigan Supreme Court held in November 1989 that that provision was nullified by the Age of Majority Act, which establishes 18 as the legal age of adulthood (Smith v Smith, 433 Mich 606). The Court also ruled that the Age of Majority Act preempted a court rule that authorizes support orders to provide for postmajority support until high school graduation or under exceptional circumstances (MCR 3.209(B)(1)). As a result, a court no longer may order support for a child over age 18 until he or she graduates from high school or college, or for a disabled adult child. This result is considered harsh not only by numerous practitioners, who have operated under the belief that the divorce law and the court rule were valid, but also by the Supreme Court itself, which stated that, "We urge the Legislature to reconsider the child support laws in order to align them with the laws of those states that have expressly provided for postmajority child support. For, as desirable as it may be, we are restricted by the constitution of our state from reforming the moral obligation of a divorced parent of an adult child into that of a legal obligation." (For a discussion of the Smith decision, see BACKGROUND.)

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".

PUBLIC ACT 237 of 1990**PUBLIC ACT 238 of 1990****PUBLIC ACT 239 of 1990****PUBLIC ACT 240 of 1990****PUBLIC ACT 242 of 1990**

S.B. 902-906 (1-17-91)

S.B. 902-906 (9-19-90)

CONTENT

The bills would amend various statutes to allow a court to order support, under certain conditions, for a child who had reached 18 years of age, but was not older than 19 years and six months. The bills all are tie-barred to House Bill 5287 (Public Act 104 of 1990), which amended the Age of Majority Act to allow a court to order postmajority support payments as provided in the divorce Act, the Child Custody Act, the Family Support Act, the Paternity Act, or the emancipation of minors Act.

Senate Bills 902 and 903 would amend the Family Support Act and the emancipation of minors Act, respectively, to allow a court to order support for a child who had reached 18 years of age, but was not older than 19 years and six months of age, while the child was regularly attending high school on a full-time basis, "with a reasonable expectation of completing sufficient credits to graduate" and resided full-time with the payee of support or at an institution. A complaint or motion requesting such support could be filed at any time before the child reached 19 years and six months of age. (The Family Support Act provides for court-ordered support in families in which a married parent and a minor child or children live separate and away from the noncustodial parent. The emancipation of minors Act specifies that "parents are jointly and severally obligated to support a minor unless a court...modifies or terminates the obligation or the minor is emancipated by operation of law".)

A provision for postmajority support in an order or judgment entered before, on, or after the bill's effective date would be valid and enforceable if any of the following applied:

- The provision was stated in the order, by agreement of the parties.
- The provision was contained in the judgment or order by agreement of the parties, as evidenced by the approval of the substance of the order or judgment by the parties or their attorneys.
- The provision was included by written agreement, signed by the parties.
- The provision was contained in the order or judgment by oral agreement as stated on the record.

A provision for postmajority support in an order or judgment entered before the bill took effect, and without the parties' agreement, would be valid and enforceable to the extent it provided support beyond age 18 up to 19 years and six months, while the child regularly attended high school on a full-time basis "with a reasonable expectation of completing sufficient credits to graduate" and resided full-time with the payee of support or at an institution. This provision of the bill would require neither payment of postmajority support for the period between November 8, 1989, and the bills' effective date, nor reimbursement of postmajority support paid during that period, in those judicial circuits that did not enforce postmajority support during that period.

The bills also 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.

Senate Bills 904 and 905 would amend the Friend of the Court Act and the Support and Visitation Enforcement Act, respectively, to expand the definition of "recipient of support" to include the custodial parent or guardian of a child who was 18 years of age or older.

Senate Bill 906 would amend Public Act 379 of 1913, which provides for the collection of alimony and support and maintenance for minor children, to allow a court to impose penalties for

neglect or violation of a support order for children who were 18 years of age or older. (The Act allows such an action for violation or neglect of a support order for minor children, and would retain that provision.)

MCL 552.451 et al. (S.B. 902)
722.3 (S.B. 903)
552.131 (S.B. 904)
552.602 (S.B. 905)
552.151 (S.B. 906)

BACKGROUND

Smith v Smith involved a child with permanent physical and mental deficiencies as a result of birth defects. The parties were granted a divorce in 1973 and, in 1984, the plaintiff filed a motion to increase child support and to extend support beyond the child's 18th birthday. The trial court denied the motion, holding that it lacked authority to award postmajority support. The Court of Appeals, however, authorized the trial court to award postmajority support and remanded the case to determine whether the child's condition constituted an exceptional circumstance. The defendant was granted leave to appeal to the Michigan Supreme Court.

The Supreme Court held, in sum, that "the amendments to the child support and custody statutes enacted subsequent to the passage of the Age of Majority Act, which employ the restrictive term 'minor child,' evidence a legislative intent to authorize support payments for the benefit of minor children only. Further, the history of appellate court interpretation of [the divorce law] supports the conclusion that the duration of child support payments is limited by the age of majority statute. Therefore, we conclude that the exceptional-circumstances clause...is a legal nullity and that support payments may not be awarded beyond the age of majority, eighteen years." (Emphasis in original.)

In examining the legislative history of the applicable laws, the Court pointed out that, in the event of exceptional circumstances, Michigan courts have consistently authorized support payments beyond the statutory age prescribed in the divorce law, but limited such support to the age of majority, which was then 21. As a result, the enactment in 1971 of the Age of Majority Act, which reduced the age of majority to 18, put

in question the legal validity of the exceptional circumstances provision.

The Court cited a 1956 case, Johnson v Johnson (346 Mich 418), which interpreted the exceptional circumstances clause to allow support payments beyond a child's 18th birthday, but not beyond the age of majority. After the Age of Majority Act reduced the legal age to 18, according to the Court, amendments to the child support and custody laws "evidence the intention of the Legislature to leave intact the Johnson rationale". The Court discussed the use of the term "minor children" in the divorce law and the emancipation law, as well as amendments to the Child Custody Act, and concluded that the Legislature intended the word "child" to apply exclusively to minor children, and that the references to "minor children" in the divorce law "evidence the intent of the Legislature to align the child support laws with the rationale that payments are to be limited by the age of majority, currently eighteen years".

The Court acknowledged that its conclusion was contrary to the court rule that authorizes postmajority support, but noted that court rules may take precedence over statutory language only in matters involving judicial rules of practice and procedure, and that the child support provision is a matter of substantive law and, as such, supersedes the court rule.

In examining judicial interpretations of the statute, the Court stated that it had consistently held that support payments may be required only until a child attains the age of majority, and this principle was recognized over 120 years ago. Several cases decided before the Age of Majority Act was passed provided the framework for the Johnson decision. After the Act became effective, the Supreme Court and Court of Appeals continued to follow the same line of reasoning, which effectively negated the legal authority of the exceptional circumstances clause. The issue then was addressed by the Court of Appeals in 1974 in Price v Price (51 Mich App 656). According to the Supreme Court, "The Johnson and Price decisions provided the foundation for a series of cases which, absent an express agreement to the contrary, negate the obligation of a parent to provide child support payments beyond the age of majority".

Finally, the Court discussed other states' treatment of postmajority support and concluded that, "Our legislative analysis and case-law review make it evident that the factors which have led to the award of postmajority child support in other jurisdictions do not exist in the present Michigan statute." The Court added that, "As inequitable as it may appear, Michigan remains in the majority of states that do not provide postmajority child support."

FISCAL IMPACT

Senate Bills 902 and 903 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.

Senate Bills 904-906 would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

The bills, along with House Bill 5287, would allow the return to the pre-Smith practice of allowing enforcement of orders of support for children who had attained the age of 18 years, but were still in high school. For years, practitioners in the domestic law and judicial communities have operated under the belief that courts did have the authority, under statute and court rules, to order support in these situations, and attorneys have counseled their clients to consent to postmajority support. According to a source quoted in Michigan Lawyers Weekly, "About 90 percent of all divorce orders are by consent. And most if not all of those orders contained language that required child support until age 18 or graduation from high school." The bills would further the public policy of continuing a financially responsible parent's duty to support his or her offspring while that child is still in school, and encouraging students to finish their high school education. To use the

words of the Supreme Court, the bills would reform a parent's moral obligation into a legal duty.

Response: The bills would not adequately restore the law to the pre-Smith practice of granting postmajority support in "exceptional circumstances". Prior to the Smith decision, completion of high school was only one type of exceptional circumstance under which postmajority support was allowed. The bills should also specifically allow support orders in other extraordinary situations, such as cases like that of Smith involving disabled adult children. As the dissenting opinion in Smith pointed out, "It may be burdensome to make the parents of a disabled child financially responsible for the child's support, especially since the responsibility might extend for the duration of the child's life. As one commentator has observed, however, 'the child must be supported by someone, and the parent, who--however blamelessly--brought the child into the world, would appear to bear a greater responsibility for his maintenance than does anyone else, including the state or deficit-ridden federal government.'"

Supporting Argument

In response to Federal complaints, Senate Bills 902 and 903 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.

Opposing Argument

The bills' conditions for granting postmajority support for high school students are far more restrictive than under the pre-Smith practice of granting support until the completion of high school. As long as an adult child was enrolled in and attended high school, support payments for that child should continue, even if he or she were older than 19 years and six months. Prior to the Smith ruling, divorce orders routinely contained agreements to that effect. Rather than alter that practice by prohibiting such agreements beyond 19-and-one-half years of age, and requiring that some unspecified standard be met to show both a "reasonable expectation" of graduating and "full-time" residence with a support recipient, the bills should simply make it permissive for courts to enforce support orders

in the same manner as they were enforced before Smith.

Response: A noncustodial parent would continue to have the option of indefinitely providing voluntary financial support for an adult child. The bills merely specify conditions that would have to be met for a court to order postmajority support. Reasonable conditions for postmajority support, such as progress toward graduation, are necessary in order to avoid attempts on the part of adult children or support recipients to continue to receive financial support illegitimately. In addition, under the bills the provision of financial support could be an incentive for the child to advance toward the completion of high school, rather than merely to attend. Further, the residency requirement would ensure that the child for whom support was paid actually resided with the support recipient or at an institution, rather than with a friend or different relative.

Opposing Argument

The bills are unfair to noncustodial parents and their spouses. The Smith decision prohibits enforcement of postmajority support orders, yet the bills would impose an uncertain financial hardship upon noncustodial parents and their spouses by allowing support orders to require postmajority support. These people need the certainty of a date for the termination of required support payments, such as a child's 18th birthday, in order to plan for their own financial future. While it may be admirable, and in the view of some even a moral duty, to provide financial support through high school, the decision and the responsibility for doing so should be strictly voluntary rather than legally imposed.

Response: A parent's obligation to pay support could not extend beyond the time the child reached 19 and one-half years old.

Legislative Analyst: P. Affholter

Fiscal Analyst: F. Sanchez

S. Angelotti

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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.