

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

• (517) 373-5383

Senate Bill 707 (Substitute S-1 as reported)  
Senate Bill 708 (as reported without amendment)  
Sponsor: Senator Harmon Cropsey  
Committee: Judiciary

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**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.)

**CONTENT**

Senate Bill 707 (S01) would amend the divorce

Act to provide that a court could order a parent to pay support for his or her child who was 18 years of age or older during the time the child was in high school, but in no case after the child was 19-and-a-half years old.

Currently, the Act provides that a court may require a parent to pay child support until the child is 18 years old and, under exceptional circumstances, after the child turns 18. The bill specifies that exceptional circumstances would include the circumstances described above.

Senate Bill 708 would amend the Age of Majority Act to provide that a court could order support payments for a child 18 years of age or older as provided in the divorce Act, notwithstanding the provision that a person who is at least 18 is an adult of legal age for all purposes whatsoever.

The bill also specifies that 18 years would be the age of majority unless otherwise provided in the State Constitution.

MCL 552.17a (S.B. 707)  
722.52 (S.B. 708)

**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

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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 iniquitable as it may appear, Michigan remains in the majority of states that do not provide postmajority child support."

### **FISCAL IMPACT**

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

## **ARGUMENTS**

### **Supporting Argument**

By amending the Age of Majority Act to create an exception for provisions in the divorce law that allow postmajority child support, Senate Bill 708 would remedy the unfortunate holding in Smith and empower courts, in exceptional circumstances, to order support for children who are 18 or older. Senate Bill 707 (S-1) would make it clear that exceptional circumstances included situations in which children between the age of 18 and 19-and-a-half were 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 render a parent's moral obligation into a legal duty.

**Response:** The bills should address the issue of retroactivity. While the Michigan Court of Appeals recently upheld the enforceability of agreements between the parties to provide for postmajority support (Aussie v Aussie, March 5, 1989), Smith presumably will preclude the enforcement of postmajority support previously ordered by a court. To avert a spate of lawsuits seeking to overturn or modify such court orders, the bills should make it clear that they applied retroactively to those situations that would be covered by the bills. Further, the bills should specify in statute that agreements for postmajority support would be enforceable if evidence of the settlement existed.

### **Supporting Argument**

Under Senate Bill 707 (S-1), the divorce law's exceptional circumstances provision would include but not be limited to circumstances in which a child between the age of 18 and 19-

and-a-half is in high school. This means that courts could order postmajority support 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.'"

### **Opposing Argument**

The bills should be limited to situations involving a child still in high school, rather than extending to other exceptional circumstances. In particular, postmajority support should not be allowed for disabled adult children, since support payments reduce the amount of and might eliminate eligibility for governmental disability benefits.

Legislative Analyst: S. Margules  
Fiscal Analyst: F. Sanchez

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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.

SENATE ANALYSIS SECTION

SENATE BILL 708

ANALYSIS Revised First

SEE 707