



**House
Legislative
Analysis
Section**

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**SURCHARGE ON LATE SUPPORT
PAYMENTS**

**House Bills 5028 and 5045 as passed by
the House
Second Analysis (12-15-95)**

**Sponsor: Rep. Willis Bullard, Jr.
Committee: Judiciary and Civil Rights**

THE APPARENT PROBLEM:

According to friend of the court records, a large number of people required by circuit court orders to make support payments to former spouses or custodial parents fail to make these support payments in a timely fashion. As a result, the party who was to have received this support must find other means by which to meet his or her daily living costs. Many times, this drives the spouse or custodial parent to rely upon one form or another of public assistance.

In response to this problem, Public Act 145 of 1995 (enrolled House Bill 4498) was enacted as a means of encouraging prompt payment of support obligations. When it takes effect on January 1, 1996, the act will require the friend of the court (FOC) to add a fee of eight percent to past due child or spousal support payments. This fee will be calculated biannually and added to the accrued support arrearage on January 1 and July 1 of each year.

At the time of the bill's passage, there were some concerns over what term should be used to describe the amount of money added to past due support. Several different options were suggested, including "interest", "additional support", and "penalty", and finally "fee" was settled on. Unfortunately, the use of the term "fee" to describe the penalty applied to past due support creates a conflict between Public Act 145 of 1995 and certain federal laws and regulations (i.e., 42 USC 654[21]; 45 CFR 302.75) which establish requirements for imposing late payment fees on past due support. Since Public Act 145 does not meet any of the requirements for the imposition of late payment fees on past due support set forth in the relevant federal laws and regulations, it is likely that the act, when implemented, could cause the loss of federal funding for the state's Title IV-D Child Support Program and the reduction of federal funding for AFDC. Further, some contend that as written, Public Act 145 could have two unintended results. First, the law would allow for the imposition of judgment interest on support arrearages, in addition to the new law's late payment fee on past due support. Second, the new law would allow

for a late payment fee to be imposed on support arrearages, even where the payment of support was being made by the payer's employer through garnishment of wages.

Finally, the changes in the Support and Visitation Act were not incorporated into the Friend of the Court Act, leaving inconsistencies between the two statutes. Legislation has been proposed to address these concerns.

THE CONTENT OF THE BILLS:

House Bill 5028 and House Bill 5045 would amend the Support and Visitation Act and the Friend of the Court Act, respectively. The bills would modify the provisions of Public Act 145 of 1995, which requires a fee on overdue child support payments. The bills would rename the fee, calling it a "surcharge", and would include the surcharge in the Friend of the Court Act's definition of support.

Under Public Act 145 of 1995 (enrolled House Bill 4498), the friend of the court (FOC) is required to add a fee of eight percent to past due child or spousal support payments. This fee is calculated biannually and added to the accrued support arrearage on January 1 and July 1 of each year. Support amounts which are ordered by the court under the Paternity Act but are incurred before the effective date of the court's order are not subject to this fee.

The new law also requires that when the FOC receives any payment of support, that payment is to be applied first to the current monthly support, and then to the support arrearage, including any fees accumulated under the new law. When determining whether a fee should be charged or calculating the amount of the fee, a support payment is not considered paid until it is actually received by the FOC.

House Bill 5028 would amend the language of the new law (contained in the Support and Visitation Act, MCL 552.602 et al.) by changing the term used to identify the

House Bills 5028 and 5045 (12-15-95)

sum of money added for overdue support, by limiting the application of interest to a support order, and by allowing a surcharge to be assessed only on those amounts owed which are in excess of two weeks worth of support.

Under the bill, the money added for overdue support would be a "surcharge" rather than a fee. Further, the bill would specify that a support order could not accrue interest (thus preventing the addition of judgment interest on top of the surcharge). Also, the bill would require that the FOC calculation of the amount of support due and owing be reduced by an amount equal to two weeks worth of support.

House Bill 5045, which is tie-barred to House Bill 5028, would amend the Friend of the Court Act (MCL 552.531) by amending the act's definition of support. The bill would include the surcharge accumulated for overdue support in the Friend of the Court Act's definition of support.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills have no fiscal implications. (9-26-95)

ARGUMENTS:

For:

According to the Department of Social Services, use of the word "fee" to describe the penalty calculated on the past due support poses several potentially serious problems. Federal law and regulations prescribe requirements for the imposition of late payment fees on overdue support. The provisions in Public Act 145 of 1995 are in conflict with the federal law and regulations as follows:

*The act sets the fee at an annual rate of eight percent, while federal law requires that a late payment fee be no less than three percent nor more than six percent of the overdue support.

*The act calculates the fee on January 1 and July 1 of each year. Federal law requires that late payments be calculated as arrearages accrue.

*The act's fee is added to support arrearages, giving it the same collection priority as a support arrearage. Federal law requires that fees may only be collected after the full amount of current and overdue support have been paid.

*Under the act, the fee is payable to the support recipient, either the custodial parent or the state (where

the support has been assigned to the Department of Social Services). Federal law requires that fees must reduce expenditures claimed under the Title IV-D child support program and may be retained by local jurisdictions making the collection.

As a result of these conflicts, the act creates a potential for noncompliance with the federal requirements, which could result in a loss of federal funding for the state's Title IV-D child support program, and a reduction in federal funding for the AFDC program.

The bills would resolve several problems with the language of Public Act 145 of 1995. The use of the word "fee" to describe the amount of money charged for the late payment of support would be removed, so that the federal funds for the state's Title IV-D Child Support Program and AFDC will not be jeopardized. The bills would also make it clear that judgment interest could not be added on top of the surcharge for late payment of support, and would prevent the payer from being penalized for the late payment of support where the fault for the delay lies with the payer's employer and not with the payer by granting a two-week grace period.

Against:

It is unnecessary to attempt to prevent the payer from being penalized for payments that are delayed by the payer's employer. The law as passed provides for the fee (or surcharge) to be calculated every January 1 and June 1, and as a result already provides a grace period of six months. In addition, the local units of the friend of the court could handle individual cases where the delay was the fault of the payer's employer. Legislating an additional grace period is unfair. Support should be paid in a timely fashion, and regardless of whether the payments are garnished or paid directly by the payer they should remain the responsibility of the payer.

POSITIONS:

The Department of Social Services supports the bills. (12-15-95)

The Family Law Section of the State Bar of Michigan supports the bills. (12-15-95)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.