House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

INCOME WITHHOLDING

House Bill 6555
Sponsor: Rep. Barb Vander Veen
Committee: Family and Children Services

Complete to 12-3-02

A SUMMARY OF HOUSE BILL 6555 AS INTRODUCED 12-3-02

The bill would make several amendments to the Support and Parenting Time Enforcement Act.

Under the act, the Friend of the Court (FOC) is required to send notice of a child support arrearage to a payer if the arrearage reaches a level that triggers certain enforcement proceedings. The bill would amend this provision so that it would apply only if an income withholding is not immediately effective and there is an arrearage that requires enforcement proceedings, or if the amount of the income withholding is administratively adjusted. In addition, the bill would add language requiring the notice to contain a statement that the payer's income withholding is being administratively adjusted and the amount of the adjustment.

In addition, the bill would permit a payer to request a hearing within 21 days of the notice to contest the income withholding if the administrative adjustment will cause an unjust or inappropriate result. The bill would also delete a requirement that the notice state that if the hearing is held before a referee, the payer has a right to a de novo hearing before a circuit court judge. The bill would require that the notice include information on the place where a request for a hearing would have to be filed and that a person could request a hearing by filing a request in accordance with the provisions contained in the notice and by serving a copy on the other party.

Further, the bill would specify that a hearing concerning implementation of an income withholding that was not previously effective could be requested only on the grounds that the income withholding is not proper due to a mistake of fact concerning the amount of current or overdue support or the identity of the payer. If a payer requested a hearing, the notice and the request would have to be filed with the clerk of the court as a motion contesting the proposed action.

Under the act, if the payer establishes at the hearing that the withholding is improper due to a mistake of fact, the referee or circuit judge <u>may</u> rescind the order of income withholding. The bill would amend this provision to <u>require</u> that the income withholding be modified or rescinded if the payer established that the income withholding was improper or that the implementation of an administrative adjustment of the amount of the arrearage to be withheld will cause an unjust or inappropriate result.

Under the act, the court may find a source of income (that is, an employer or other entity that owes the payer income) to be in contempt and fine that source of income if the source of

income is served with a notice of income withholding and fails to comply with the notice. The bill would allow the court to also require the source of income to pay an amount pursuant to Section 11a(2) if the terms of that section have been met. [Note: Under Section 11a(2), a source of income is liable for any amount that the source knowingly and intentionally fails to withhold from the payer's income following service of notice of the income withholding, except as limited by the federal Consumer Credit Protection Act.] In addition, the bill states that the IV-D agency (the Office of Child Support) would be responsible for initiating contempt proceedings, and that those proceedings could be initiated in any county with jurisdiction over the source of income.

In addition, the act permits the circuit court to take other enforcement action under applicable laws. The bill would specify that nothing in this provision would authorize the IV-D agency to pursue enforcement action under applicable laws except as specifically authorized by statute or court rule.

The bill would also permit the court to find a payer in contempt if he or she had failed to obtain a source of income and had failed to participate in a work activity after referral by the FOC. In addition, the act permits the court, upon finding a payer in contempt, to commit the payer to the county jail with the privilege of leaving, as the court determines, to go to and return from a place of employment or to seek employment. The bill would amend this provision to instead permit the court to commit the payer to the county jail with the privilege of leaving, as the court determines, to allow the payer to participate in a "work activity" (which is defined in the act, and encompasses more than traditional employment).

[Note: The bill would amend section 35 of the act, which was last amended with the enactment of Public Act 567 of 2002, effective June 1, 2003.]

MCL 552.607 et al.

Analyst: M. Wolf

■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.