

1999 PUBLIC AND LOCAL ACTS

[No. 160]

(HB 4818)

AN ACT to amend 1982 PA 295, entitled "An act to provide for and to supplement statutes that provide for the enforcement of support, health care, and parenting time orders with respect to divorce, separate maintenance, paternity, child custody, and spouse support; to prescribe certain provisions of those orders; to prescribe the powers and duties of the circuit court and friend of the court; to prescribe certain duties of certain employers and other sources of income; to provide for penalties and remedies; and to repeal acts and parts of acts," by amending sections 2, 9, 11a, 32, 37, and 48 (MCL 552.602, 552.609, 552.611a, 552.632, 552.637, and 552.648), sections 2, 9, and 11a as amended by 1998 PA 334 and section 32 as amended by 1996 PA 301.

The People of the State of Michigan enact:

552.602 Definitions. [M.S.A. 25.164(2)]

Sec. 2. As used in this act:

(a) "Account" means any of the following:

- (i) A demand deposit account.
- (ii) A draft account.
- (iii) A checking account.
- (iv) A negotiable order of withdrawal account.
- (v) A share account.
- (vi) A savings account.
- (vii) A time savings account.
- (viii) A mutual fund account.
- (ix) A securities brokerage account.
- (x) A money market account.
- (xi) A retail investment account.

(b) "Account" does not mean any of the following:

- (i) A trust.
- (ii) An annuity.
- (iii) A qualified individual retirement account.
- (iv) An account covered by the employee retirement income security act of 1974, Public Law 93-406, 88 Stat. 829.
- (v) A pension or retirement plan.
- (vi) An insurance policy.

(c) "Address" means the primary address shown on the records of a financial institution used by the financial institution to contact the account holder.

(d) "Department" means the family independence agency.

(e) "Driver's license" means license as that term is defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25.

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(f) "Employer" means an individual, sole proprietorship, partnership, association, or private or public corporation, the United States or a federal agency, this state or a political subdivision of this state, another state or a political subdivision of another state, or another legal entity that hires and pays an individual for his or her services.

(g) "Financial asset" means a deposit, account, money market fund, stock, bond, or similar instrument.

(h) "Financial institution" means any of the following:

(i) A state or national bank.

(ii) A state or federally chartered savings and loan association.

(iii) A state or federally chartered savings bank.

(iv) A state or federally chartered credit union.

(v) An insurance company.

(vi) An entity that offers any of the following to a resident of this state:

(A) A mutual fund account.

(B) A securities brokerage account.

(C) A money market account.

(D) A retail investment account.

(vii) An entity regulated by the securities and exchange commission that collects funds from the public.

(viii) An entity that is a member of the national association of securities dealers and that collects funds from the public.

(ix) Another entity that collects funds from the public.

(i) "Friend of the court act" means 1982 PA 294, MCL 552.501 to 552.535.

(j) "Income" means any of the following:

(i) Commissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his or her employer and successor employers.

(ii) A payment due or to be due in the future to an individual from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental unemployment benefits, or worker's compensation.

(iii) An amount of money that is due to an individual as a debt of another individual, partnership, association, or private or public corporation, the United States or a federal agency, this state or a political subdivision of this state, another state or a political subdivision of another state, or another legal entity that is indebted to the individual.

(k) "Insurer" means an insurer, health maintenance organization, health care corporation, or other group, plan, or entity that provides health care coverage in accordance with any of the following acts:

(i) The public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(ii) The insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(iii) The nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704.

(l) "Medical assistance" means medical assistance as established under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v.

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(m) "Occupational license" means a certificate, registration, or license issued by a state department, bureau, or agency that has regulatory authority over an individual that allows an individual to legally engage in a regulated occupation or that allows the individual to use a specific title in the practice of an occupation, profession, or vocation.

(n) "Office of child support" means the office of child support established in section 2 of the office of child support act, 1971 PA 174, MCL 400.232.

(o) "Office of the friend of the court" means an agency created in section 3 of the friend of the court act, MCL 552.503.

(p) "Order of income withholding" means an order entered by the circuit court providing for the withholding of a payer's income to enforce a support order under this act.

(q) "Payer" means an individual who is ordered by the circuit court to pay support.

(r) "Plan administrator" means that term as used in relation to a group health plan under section 609 of part 6 of subtitle B of title I of the employee retirement income security act of 1974, Public Law 93-406, 29 U.S.C. 1169, if the health care coverage plan of the individual who is responsible for providing a child with health care coverage is subject to that act.

(s) "Political subdivision" means a county, city, village, township, educational institution, school district, or special district or authority of the state or of a local unit of government.

(t) "Recipient of support" means the following:

(i) The spouse, if the support order orders spousal support.

(ii) The custodial parent or guardian, if the support order orders support for a minor child or a child who is 18 years of age or older.

(iii) The department, if support has been assigned to that department.

(u) "Recreational or sporting license" means a hunting, fishing, or fur harvester's license issued under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, but does not include a commercial fishing license or permit issued under part 473 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.47301 to 324.47362.

(v) "Referee" means a person who is designated as a referee under the friend of the court act.

(w) "Source of income" means an employer or successor employer or another individual or entity that owes or will owe income to the payer.

(x) "State disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

(y) "Support" means all of the following:

(i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses.

(ii) The payment of money ordered by the circuit court under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the necessary expenses incurred by or for the mother in connection with her confinement, for other expenses in connection with the pregnancy of the mother, or for the repayment of genetic testing expenses.

(iii) A surcharge accumulated under section 3a.

(z) "Support order" means an order entered by the circuit court for the payment of support, whether or not a sum certain.

(aa) "Work activity" means any of the following:

- (i) Unsubsidized employment.
- (ii) Subsidized private sector employment.
- (iii) Subsidized public sector employment.

(iv) Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available.

- (v) On-the-job training.
- (vi) Job search and job readiness assistance.
- (vii) Community service programs.

(viii) Vocational educational training, not to exceed 12 months with respect to an individual.

(ix) Job skills training directly related to employment.

(x) Education directly related to employment, in the case of an individual who has not received a high school diploma or a certificate of high school equivalency.

(xi) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of an individual who has not completed secondary school or received such a certificate.

(xii) The provisions of child care services to an individual who is participating in a community service program.

552.609 Order of income withholding; service; directives; notice.
[M.S.A. 25.164(9)]

Sec. 9. A notice of income withholding entered under this act shall be served on sources of income as provided in section 11. The notice shall direct sources of income to withhold from income due the payer an amount sufficient to meet the payments ordered for support and service fees, and to defray arrearages in payments and service fees due at the time the order of income withholding takes effect. The notice shall also direct that the amount withheld for support, fees, and health care coverage premiums shall not exceed the amount allowed under section 303(b) of title III of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1673. The notice shall contain a statement of the requirements of sections 11, 11a, 12, 13, 14, and 23. The notice shall also direct that income withheld under the notice for support and fees shall be paid to the office of the friend of the court or to the state disbursement unit, as appropriate, within 3 days after the date of the withholding.

552.611a More than 1 order of income withholding against payer or parent; compliance with source of income; priority; liability; identification of withholding; combining amounts in single payment; identifying portion of single payment attributable to each payer.
[M.S.A. 25.164(11a)]

Sec. 11a. (1) If there is more than 1 order to withhold income for support, fees, or health care coverage premiums against a payer or parent under this act, the source of income shall comply with all of the notices to withhold income to the extent that the total amount withheld from the payer's or parent's income does not exceed the limits imposed under section 303(b) of title III of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1673, giving priority to amounts designated in each notice as current support, as follows:

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(a) If the total of the amounts designated in the notices as current support exceeds the amount available for income withholding, then the source of income shall allocate to each order an amount for current support equal to the amount designated in the notice as current support, divided by the total of the amounts designated in the notices as current support, multiplied by the amount of income available for income withholding.

(b) If the total of the amounts designated in the notices as current support does not exceed the amount available for income withholding, then the source of income shall pay the amounts designated as current support, and in addition shall proportionately allocate to each order an amount for past due support not to exceed the amount designated in the notice as past due support. This subdivision does not require the maximum withholding to satisfy past due child or spousal support.

(c) If the total amounts allocated to current and past due support do not exceed the amount available for income withholding, then the source of income shall allocate the remaining income to the parent's portion of health care coverage premiums attributable to coverage of the children specified in the order if remaining income is sufficient to cover the cost of the premium. This subdivision does not require a source of income to pay the parent's portion of health care coverage premiums.

(2) A source of income is liable for an amount that the source knowingly and intentionally fails to withhold from the payer's income following service on the source of income of a notice of income withholding, except to the extent that the amount is limited by subsection (1) and section 303(b) of title III of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1673.

(3) A source of income shall identify each withholding by payer, payer's social security number, case number, amount withheld, and the date on which support was withheld from the payer's income. If the source of income is an employer, it shall also provide its federal employer identification number. A source of income may meet the requirements of this subsection through the use of an automated reporting system established by the SDU.

(4) A source of income may combine amounts withheld from payers' incomes in a single payment and separately identify by payer, social security number, and case number the portion of the single payment that is attributable to each individual payer.

552.632 Payer arrested under bench warrant; deposit; receipt; form; depositing bond with clerk; hearing on order to show cause; determination; failure to appear. [M.S.A. 25.164(32)]

Sec. 32. (1) If a payer arrested under a bench warrant issued under section 31 cannot be brought before the court within 24 hours, the payer may recognize for his or her appearance by leaving with the sheriff or deputy sheriff in charge of the county jail a sum of money in the amount determined by the court and stated in the bench warrant, but not to exceed the amount of arrearage under the support order that is stated on the bench warrant plus costs that may be ordered if the payer fails to appear.

(2) The officer receiving a deposit under subsection (1) shall give to the arrested payer a receipt for the money deposited with the officer on a form as follows:

Date _____

Received from _____ the sum of _____ dollars as cash bail to assure the appearance of _____ before _____ circuit court judge in the county of _____, at _____ on the _____ day of _____, 19____, to respond to an order to show cause why he or she should not be held in contempt for failure or refusal to obey or perform a support

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order. If the payer fails to appear at the time and place indicated above, fails to submit to the jurisdiction of the court, and fails to abide by an order of the court, the money deposited shall be transmitted to the friend of the court or to the state disbursement unit for payment of the arrearage to the recipient of support and of costs to the court. By depositing the money with the officer and accepting this receipt, the recipient of this receipt waives a claim to the money following its transmittal to the friend of the court or to the SDU.

Officer: _____ Dept.: _____

(3) The officer receiving the deposit shall in turn deposit the bond received under this section with the clerk of the court that issued the bench warrant.

(4) On the basis of the hearing on the order to show cause, the court by order shall determine how much of the money deposited under this section is to be transmitted to the friend of the court or to the SDU for payment to 1 or more recipients of support and shall return the balance, if any, to the payer.

(5) If the payer fails to appear as required, the court shall transmit the deposit to the friend of the court or to the SDU for payment to 1 or more recipients of support and to the county treasurer for distribution as provided in section 31. In addition, the court may again issue a bench warrant for the further appearance of the payer.

552.637 Order of commitment. [M.S.A. 25.164(37)]

Sec. 37. (1) An order of commitment under section 33 or 35 shall be entered only if other remedies appear unlikely to correct the payer's failure or refusal to pay support.

(2) An order of commitment under section 33 shall separately state both of the following:

(a) The amount of the arrearage under the support order.

(b) The amount to be paid by the payer in order to be released from the order of commitment, which amount may not be greater than the payer's currently available resources as found by the court.

(3) An order of commitment under section 35 shall separately state both of the following:

(a) The amount of arrearage under the support order.

(b) The amount to be paid in order to be released from the order of commitment.

(4) A commitment shall continue until the amount ordered to be paid under subsection (2)(b) or (3)(b) is paid but shall not exceed 45 days for the first adjudication of contempt or 90 days for a subsequent adjudication of contempt.

(5) The court may further direct that a portion or all of the earnings of the payer in the facility or institution shall be paid to and applied for support until the payer complies with the order of the court, until the payer is released pursuant to this section from an order of commitment, or until the further order of the court. If it appears that the department has contributed towards the support of the minor child or children during the period of noncompliance with the order of the court, the court, in the contempt proceedings, may order all or part of a lump sum payment to the office of the friend of the court, state disbursement unit, or county clerk to be paid to the department not to exceed the amount of the contribution made by the department. The court may order the money paid to the person or persons entitled to the money in weekly or monthly installments by the office of the friend of the court, SDU, or county clerk to the extent that the court considers installments necessary for support.

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552.648 Transition to centralized receipt and disbursement of support and fees. [M.S.A. 25.164(48)]

Sec. 48. The department, the SDU, and each office of the friend of the court shall cooperate in the transition to the centralized receipt and disbursement of support and fees. An office of the friend of the court shall continue to receive and disburse support and fees through the transition, based on the schedule developed as required by section 6 of the office of child support act, 1971 PA 174, MCL 400.236, and modifications to that schedule as the department considers necessary.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4816 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved November 3, 1999.

Filed with Secretary of State November 3, 1999.

Compiler's note: House Bill No. 4816, referred to in enacting section 1, was filed with the Secretary of State November 3, 1999, and became P.A. 1999, No. 161, Imd. Eff. Nov. 3, 1999.
