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Senate Bills 887 through 890 (as introduced 12-10-03)

Sponsor: Senator Bev Hammerstrom (S.B. 887)  
Senator Gerald Van Woerkom (S.B. 888)  
Senator Tony Stamas (S.B. 889)  
Senator Bruce Patterson (S.B. 890)

Committee: Families and Human Services

Date Completed: 6-30-04

## **CONTENT**

**The bills would amend the Support and Parenting Time Enforcement Act to provide that the amount of past due support that accrued under a judgment as provided in Section 3 of the Act would be a lien against the net proceeds of an insurance policy or contract, an inheritance, a workers' compensation award or settlement, and a lawsuit settlement. The bills would provide for the payment of the net proceeds to satisfy a child support debt of the individual who would be entitled to the proceeds.**

Senate Bill 887 would apply to the beneficiary or claimant of an insurance policy or contract. Senate Bill 888 would apply to the distributee or beneficiary of an inheritance. Senate Bill 889 would apply to the claimant of a redemption, voluntary pay settlement, or advance payment negotiated before or after the filing of a workers' disability compensation claim, or an order or award. Senate Bill 890 would apply to the prevailing party in a settlement negotiated before or after the filing of a lawsuit, civil judgment, or arbitration award.

(Under Section 3, a support order that is part of a judgment or is an order in a domestic relations matter is a judgment on and after the date the support amount is due with the full force, effect, and attributes of a judgment of this State. The order must include a notice informing the payer of the imposition of liens by operation of law and that the payer's real and personal property can be encumbered or seized if an arrearage accrues in an amount greater than the amount of periodic support payments under the support order for the time period specified in the Act.)

Under the bills, the lien would be effective at the time the support was due and unpaid and would continue until the amount of past due support was paid in full or the lien was terminated by the support enforcement agency. The lien would be perfected upon filing with the Office of Child Support (OCS). The lien would have priority over all other liens, levies, and garnishments against the net proceeds unless otherwise provided by the court in the domestic relations matter. The lien would not have priority over levies to recover unpaid income taxes owed to the State. The lien would stay the distribution of the net proceeds to the individual until the child support judgment was satisfied.

Before the net proceeds were distributed to the individual, both of the following would have to occur:

- The individual would have to provide the insurance company or agent (in the case of an insurance policy or contract) or the attorney or agent responsible for the final distribution of the money (in any of the other cases), with a certification that included the individual's full name, mailing address, date of birth, and Social Security number.
- The attorney representing the individual would have to initiate a search of child support judgments, through the OCS, to determine if he or she was a child support obligor or judgment debtor.

If the individual were not represented by an attorney, the judgment search would have to be initiated by one of the following before the proceeds could be distributed to the individual:

- For an insurance policy or contract, by the insurance company.
- For an inheritance, by the executor or administrator of the decedent's estate. (The judgment search would have to be verified by the probate registrar.)
- For a redemption, voluntary pay settlement, or advance payment negotiated before or after the filing of a workers' disability compensation claim, or an order or award, by the agent.
- For a settlement negotiated before or after the filing of a lawsuit, civil judgment, or arbitration award, by the opposing attorney or agent. (If judgments, settlements, or awards resulted from a labor arbitration involving employees of a school board or school district, the search would have to be initiated by the school board or district before the release of net proceeds to the employees and only if there were an income withholding for child support active against the employee in the board's or district's records.)

(Under Senate Bill 889, the OCS would have to transmit information on child support judgment debtors to the Bureau of Workers' and Unemployment Compensation at least once every 60 days. The information would have to include the debtor's name, social security number, the amount of the child support judgment, the Friend of the Court case number, and the office to which the judgment was payable. The Bureau would have to match the data against the information it maintains for individuals who have filed workers' compensation claims with the Bureau. When a match was identified, the Bureau would have to notify the appropriate workers' compensation magistrate of the judgment before the decision, award, determination, judgment, or order approving the redemption, voluntary pay settlement, or advance payment was rendered. The magistrate would have to incorporate in the decision, award, etc. an order requiring the employer or the employer's insurance carrier to contact the OCS to satisfy the judgment out of the net proceeds before money was paid to the employee.)

The OCS would have to provide a certification identifying whether or not the individual was a child support judgment debtor.

The attorney, insurance company, or agent would have to conduct the child support judgment search only at the time of the distribution of the first payment, if net proceeds were to be paid as follows:

- Through a payment plan, for an insurance policy.
- Through a payment plan or trust, for an inheritance.
- Through a structured payment plan, for a redemption, voluntary pay settlement, or advance payment related to a workers' disability compensation claim, or order or award.
- Through a structured settlement or other payment plan, for a settlement in a lawsuit, civil judgment, or arbitration award.

If a child support judgment were identified, the attorney, insurance company, or agent would have to provide the OCS with a copy of the structured payment plan within 30 days of identifying the child support judgment.

The fee for a judgment search could not exceed \$10 for each name of a child support judgment debtor that was searched. The fee would be chargeable against the net proceeds.

If the certification showed that the individual was not a child support judgment debtor, the net proceeds could be paid to the individual immediately. If the certification did show that the individual was a child support judgment debtor, the attorney, insurance company, or agent who initiated the search would have to contact the OCS to arrange for the satisfaction of the judgment. The attorney, insurance company, or agent would have to notify the individual of the intent to satisfy the judgment before the disbursement of the money. Upon receipt of a satisfaction of judgment, the attorney, insurance company, or agent would have to pay the balance of the financial assets to the individual. If the net proceeds were less than the amount of the child support judgment, the entire amount of the net proceeds would have to be paid to the OCS as partial satisfaction of the judgment.

An attorney, insurance company, or agent would not be liable for distributing net proceeds to the individual based on the results of a judgment certification showing that the individual was not the debtor of a child support judgment, if it were later shown that the individual provided inaccurate personal information on the initial certification to the attorney, insurance company, or agent.

An attorney, insurance company, or agent who satisfied a child support judgment from the net proceeds would not be liable for payments that otherwise would have been made under the bills if those payments were not identified to the attorney, insurance company, or agent at the time of the satisfaction; or to the individual or his or her creditors. An attorney would not be required to challenge a child support judgment unless retained by the individual to do so.

To the extent feasible and permitted by the Michigan Court Rules, the OCS could share information on a child support judgment debtor with an insurance carrier or, if applicable, third party administrator for the sole purpose of complying with the Act.

The bills would define "agent" as one of the following, as applicable:

- An authorized representative of the beneficiary or claimant of an insurance policy.
- An authorized representative of the distributee or beneficiary of an inheritance; or an executor or administrator of a decedent's estate.
- An authorized representative of the claimant of a redemption, voluntary pay settlement, or advance payment negotiated before or after the filing of a workers' disability compensation claim, or an order or award; the employer; or the employer's third party administrator or insurance carrier.
- An authorized representative of the prevailing party in a settlement negotiated before or after the filing of a lawsuit, civil judgment, or arbitration award.

Additionally, the term would include any other person who was responsible for the distribution of net proceeds to the beneficiary or claimant, distributee or beneficiary, claimant, or prevailing party.

The terms "beneficiary or claimant", "distributee or beneficiary", "claimant", and "prevailing party" would not include a partnership, corporation, limited liability partnership, financial institution, government entity, or minor child.

"Net proceeds" would mean any amount of money, in excess of \$2,000, payable to one of the following, as applicable:

- The beneficiary or claimant of an insurance policy or contract after fees for health care providers were deducted.
- The distributee or beneficiary of an inheritance after attorney fees or other costs related to the inheritance were deducted from the estate.
- The claimant of a redemption, voluntary pay settlement, or advance payment negotiated before or after the filing of a workers' disability compensation claim, or an order or award, after the deduction of attorney fees, witness fees, payments to the Medicaid program, reimbursement to an employer or to the employers' worker's compensation carrier, and other related costs.
- The prevailing party in a settlement negotiated before or after the filing of a lawsuit, civil judgment, or arbitration award, after attorney fees, witness fees, court costs, and other related costs were deducted.

Proposed MCL 552.625j

Legislative Analyst: Julie Koval

### **FISCAL IMPACT**

It appears that the bills would have an indeterminate fiscal impact on the Family Independence Agency. It is difficult to determine how many child support cases have past-due court-ordered support and have the potential for liens on future judgments or settlements. The FY 2003-04 appropriation for child support collections is \$47,710,700. For each 1% increase in child support collections due to the bills, total revenue would increase by approximately \$477,100. The bills would assist the State in meeting child support requirements to earn incentive payments. However, some increased administrative costs for new or revised filing forms, adjustments needed in technology, and child support lien network participation could offset any increase in collections.

Senate Bill 889 would have no fiscal impact on the Department of Labor and Economic Growth.

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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.