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BILL ANALYSIS



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House Bill 4742 (Substitute H-1 as passed by the House)
House Bills 4743, 4744, and 4745 (as passed by the House)
Sponsor: Representative Robert L. Kosowski (H.B. 4742 & 4743)
Representative Klint Kesto (H.B. 4744)
Representative Kurt Heise (H.B. 4745)
House Committee: Judiciary
Senate Committee: Families, Seniors and Human Services

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CONTENT

House Bill 4742 (H-1) would repeal the Uniform Interstate Family Support Act and reenact it with amendments, particularly with respect to support proceedings under an international convention. The Uniform Act provides for the recognition and enforcement of family support orders across state lines.

House Bills 4743, 4744, and 4745 would amend various statutes to delete Michigan Compiled Law citations to the current Uniform Interstate Family Support Act. House Bill 4743 would amend Office of Child Support Act; House Bill 4744 would amend the Support and Parenting Time Enforcement Act; and House Bill 4745 would amend the Friend of the Court Act.

All of the bills would take effect on January 1, 2016. House Bills 4743, 4744, and 4745 are tie-barred to House Bill 4742.

A description of some of the differences between the current Uniform Act and the Uniform Interstate Family Support Act proposed by House Bill 4742 (H-1) follows.

Article 2 (Jurisdiction)

Under the bill, Article 2 specifies that a Michigan tribunal exercising personal jurisdiction over a nonresident in a proceeding under the Uniform Act, under other Michigan laws relating to a support order, or recognizing a foreign support order could receive evidence from outside the State, communicate with a tribunal outside the State, and obtain discovery through a tribunal outside the State. ("Tribunal" refers to a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine a child's parentage.)

A Michigan tribunal issuing a spousal-support order consistent with Michigan law would have continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation. A Michigan tribunal could not modify a spousal-support order issued by a tribunal of another state or foreign county having continuing, exclusive jurisdiction over that order. A Michigan tribunal that had continuing, exclusive jurisdiction over a spousal support order could serve as either an initiating tribunal to request a tribunal of another state to enforce the order or a responding tribunal to enforce or modify its own spousal-support order.

Article 3 (Civil Provisions of General Application)

Under Article 3 of the proposed Act, if requested by the responding tribunal, a Michigan tribunal would have to issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal were in a foreign country, upon request, the Michigan tribunal would have to specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rates as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding Michigan tribunal would have to convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

A Michigan support enforcement agency that requested registration of a child support order in Michigan for enforcement or for modification would have to make reasonable efforts to do the following:

- Ensure that the order to be registered was the controlling order.
- If two or more child support orders existed and the identity of the controlling had not been determined, ensure that a request for such a determination was made in a tribunal having jurisdiction to do so.

A Michigan support enforcement agency that requested registration and enforcement of a support order, arrears, or judgment stated in a foreign currency would have to convert the amounts into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

A Michigan support enforcement agency would have to request a Michigan tribunal to issue a child support order and an income-withholding order that redirected payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state.

The Attorney General could determine that a foreign country had established a reciprocal arrangement for child support with Michigan and take appropriate action for notification of that determination.

If the obligor, the obligee, and the child did not live in Michigan, upon request from the Michigan support agency or the support agency of another state, the Michigan agency or a Michigan tribunal would have to do the following:

- Direct that the support payment be made to the support enforcement agency in the state in which the obligee was receiving services.
- Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

The Michigan support enforcement agency receiving redirected payments from another state under a law similar to the provision for redirected payment described above, would have to furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amount and dates of all payments received.

"Obligor" would mean an individual about whom one of the following is true, or the estate of a decedent about whom one of the following was true before the individual's death:

- Owes or is alleged to owe a duty of support.

- Is alleged but has not been adjudicated to be a parent of a child.
- Is liable under a support order.
- Is a debtor in a proceeding under Article 7.

"Obligee" would mean one or more of the following:

- An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued.
- A foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or that has independent claims based on financial assistance provided to an individual in place of child support.
- An individual seeking a judgment determining parentage of the individual's child.
- A person that is a creditor in a proceeding under Article 7.

"State enforcement agency" would mean a public official or government entity or a private agency authorized to do one or more of the following:

- Seek enforcement of support orders or laws relating to the duty of support.
- Seek establishment or modification of child support.
- Request determination of a child's parentage.
- Attempt to locate obligors or their assets.
- Request determination of the controlling child-support order.

Article 7 (Support Proceeding Under Convention)

Article 7 of the proposed Act specifies that it applies only to a support proceeding under the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded at The Hague on November 23, 2007.

The Office of Child Support would be recognized as the Michigan agency designated by the U.S. Central Authority to perform specific functions under the Convention. In a support proceeding under the Article, the Office of Child Support would have to transmit and receive applications and initiate or facilitate the institution of a proceeding regarding an application in a Michigan tribunal. The following support proceedings would be available to an obligee under the Convention:

- Recognition or recognition and enforcement of a foreign support order.
- Enforcement of a support order issued or recognized in Michigan.
- Establishment of a support order if there were no existing order, including, if necessary, determination of a child's parentage.
- Establishment of a support order if recognition of a foreign support order were refused under Article 7.
- Modification of a Michigan tribunal's support order.
- Modification of a support order of a tribunal of another state or foreign country.

The following support proceedings would be available under the Convention to an obligor against which there was an existing support order:

- Recognition of an order suspending or limiting enforcement of an existing support order of a Michigan tribunal.
- Modification of a support order of a Michigan tribunal.
- Modification of a support order of a tribunal of another state or a foreign country.

Except as otherwise provided, a Michigan tribunal would have to recognize and enforce a registered Convention support order. The following would be the grounds on which a Michigan tribunal could refuse to do so:

- Recognition and enforcement of the order were manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which would include the opportunity to be heard.
- The issuing tribunal lacked personal jurisdiction under the Uniform Act.
- The order was not enforceable in the issuing country.
- The order was obtained by fraud in connection with a matter of procedure.
- A record lacked authenticity or integrity.
- A proceeding between the same parties and having the same purpose was pending before a Michigan tribunal and the proceeding was the first to be filed.
- The order was incompatible with a more recent support order involving the same parties and having the same purpose if the more recent order were entitled to recognition and enforcement under Michigan law.
- Payment, to the extent alleged arrears had been paid in whole or in part.
- The order was made in violation of Article 7.

A Michigan tribunal also could refuse recognition and enforcement of a registered Convention support order if, in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country, one or more of the following applied:

- If the law of that country provided for prior notice of proceedings, the respondent did not have proper notice and an opportunity to be heard.
- If the law of that country did not provide for prior notice, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal.

If a Michigan tribunal did not recognize and enforce a Convention support order in its entirety, it would have to enforce any severable part of the order. An application or direct request could seek recognition and partial enforcement of a Convention support order.

Except as specified below, a Michigan tribunal would have to recognize and enforce a foreign support agreement registered in Michigan. A Michigan tribunal could vacate the registration of a foreign support agreement only if, acting on its own motion, it found that recognition and enforcement would be manifestly incompatible with public policy. In a contest of a foreign support agreement, a Michigan tribunal could refuse recognition and enforcement of the agreement if it found the following:

- Recognition and enforcement of the agreement were manifestly incompatible with public policy.
- The agreement was obtained by fraud or falsification.
- The agreement was incompatible with a support order involving the same parties and having the same purpose in Michigan, another state, or a foreign country, if the support order were entitled to recognition and enforcement in Michigan under the Uniform Act.
- The record lacked authenticity or integrity.

A proceeding for recognition and enforcement of a foreign support agreement would have to be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

A Michigan tribunal could not modify a Convention child support order if the obligee remained a resident of the foreign country where the support order was issued unless one of the following applied:

- The obligee submitted to the jurisdiction of the Michigan tribunal, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity.

-- The foreign tribunal lacked or refused to exercise jurisdiction to modify its support order or issue a new support order.

Article 9 (Miscellaneous Provisions)

The proposed Uniform Act specifies that, in applying and construing the Act, consideration would have to be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Article 9 also specifies that the Uniform Act would apply to proceedings begun on or after the Act's effective date to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement whenever it was issued or entered.

If any provision of the Uniform Act or its application to any person or circumstance were held invalid, the invalidity would not affect other provisions or applications of the Act that could be given effect without the invalid provision or application. To this end, the provisions of the Uniform Act would be severable.

For purposes of the proposed Uniform Act, an order would be manifestly incompatible with public policy if it were issued in violation of the right of due process substantially similar to that guaranteed by the U.S. Constitution and the State Constitution. A law of another county would be manifestly incompatible with public policy if it failed to grant the parties the right of due process substantially similar to that guaranteed by the U.S. Constitution and the State Constitution.

MCL 400.233 (H.B. 4743)
552.602 (H.B. 4744)
552.502 (H.B. 4745)

BACKGROUND

Uniform Interstate Family Support Act

Michigan adopted the Uniform Interstate Family Support Act in 1996. The following information about the uniform law is from the website of the Uniform Law Commission (ULC).

Since 1998, the Uniform Interstate Family Support Act has been the law of every state. The uniform law provides universal and uniform rules for the recognition and enforcement of interstate family support orders. The ULC originally promulgated the Uniform Act in 1992 and amended it in 1996.

The ULC subsequently drafted amendments to the Uniform Act in 2001 and 2008. The 2008 amendments incorporate changes required by the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. In 2014, Congress passed implementing legislation for the Hague Convention. The new Federal law, the Preventing Sex Trafficking and Strengthening Families Act, requires that the 2008 amendments to the Uniform Interstate Family Support Act be enacted in every jurisdiction as a condition for continued receipt of Federal funds supporting state child support programs. Failure to enact these amendments during the 2015 legislative session may result in a state's loss of this Federal funding. To date, 46 states and Puerto Rico have enacted the revisions. Michigan, New Jersey, and Pennsylvania, as well as the District of Columbia, have introduced legislation in 2015 to adopt the 2008 amendments.

The ULC's 2001 amendment to the Uniform Act did not make fundamental changes to it, but clarified jurisdictional rules limiting the ability of parties to seek modifications of orders in

states other than the issuing state and expanded how a controlling order is to be determined and reconciled in the event multiple orders are issued. The 2001 amendments specify that the Uniform Act is not the exclusive method of establishing or enforcing a support order and provide guidance to state support agencies with regard to the redirection of support payments. The 2001 amendments also expanded the Uniform Act to include coverage of support orders from foreign country jurisdictions pursuant to reciprocity and comity principles.

The United States signed the Hague Convention in 2007. The 2008 amendments to the Uniform Act promulgated by the ULC serve as the implementing language for the Convention throughout the states. Article 7 of the Uniform Act provides for the guidelines and procedures for the registration, recognition, enforcement and modification of the foreign support orders from countries that are parties to the Convention.

Hague Convention

The following information was retrieved from the website of the Hague Conference on Private International Law.

In November 2007, the 21st session of the Hague Conference on Private International Law closed with the signing of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

The Convention pursues the following objectives:

- An efficient and responsive system of cooperation between Contracting States (i.e., signatories to the Convention) in the processing of international applications.
- A requirement that Contracting States make available applications for establishment and modification, as well as for recognition and enforcement of maintenance decisions.
- Provisions that ensure effective access to cross-border maintenance procedures.
- A broadly based system for the recognition and enforcement of maintenance decisions made in Contracting States.
- Expedited and simplified procedures for recognition and enforcement.
- A requirement of prompt and effective enforcement.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no direct fiscal impact on State or local government. If the bills are not enacted, however, there is a risk of a significant fiscal impact on State government. As the bills would bring Michigan into compliance with current Federal law, any penalty for not enacting the bills would be avoided. If not in compliance with the Federal statute, the State risks losing an estimated \$175.0 million in child support funding for fiscal year 2015-16. There is a larger potential fiscal risk in that if the bills are not passed, the State might not be in compliance with policies that govern the Temporary Assistance for Needy Families (TANF) block grant. If the State is not in compliance with the TANF rules, approximately \$775.0 million could be at stake, depending on the interpretation of the Federal statutes and rules. Additionally, there could be a minor fiscal impact on the State if any child support orders originate from countries not currently served by Michigan courts.

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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.