



# SENATE BILL No. 186

January 26, 1993, Introduced by Senator BOUCHARD and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 3 and 7 of Act No. 295 of the Public Acts of 1982, entitled as amended "Support and visitation enforcement act," section 3 as amended by Act No. 198 of the Public Acts of 1987 and section 7 as amended by Act No. 210 of the Public Acts of 1985, being sections 552.603 and 552.607 of the Michigan Compiled Laws; and to add section 26.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3 and 7 of Act No. 295 of the Public  
2 Acts of 1982, section 3 as amended by Act No. 198 of the Public  
3 Acts of 1987 and section 7 as amended by Act No. 210 of the  
4 Public Acts of 1985, being sections 552.603 and 552.607 of the  
5 Michigan Compiled Laws, are amended and section 26 is added to  
6 read as follows:

1       Sec. 3. (1) A support order issued by a court of this state  
2 shall be enforced pursuant to ~~the requirements of~~ this  
3 section.

4       (2) Except as otherwise provided in this section, a support  
5 order that is part of a judgment or is an order in a domestic  
6 relations matter as ~~that term is~~ defined in section 31 of the  
7 friend of the court act, Act No. 294 of the Public Acts of 1982,  
8 being section 552.531 of the Michigan Compiled Laws, is a judg-  
9 ment on and after the date each support payment is due, with the  
10 full force, effect, and attributes of a judgment of this state,  
11 and is not, on and after the date it is due, subject to retroac-  
12 tive modification. ~~-(3)-~~ Retroactive modification of a support  
13 payment due under a support order is permissible with respect to  
14 any period during which there is pending a petition for modifica-  
15 tion, but only from the date that notice of the petition was  
16 given to the payer or recipient of support.

17       ~~-(4) This section shall apply to support payments due prior~~  
18 ~~to July 6, 1987, except that a payer or payee shall have 60 days~~  
19 ~~after the friend of the court mails or publishes the notice pro-~~  
20 ~~vided for in subsection (5) to file a petition for retroactive~~  
21 ~~modification of his or her support order. If a payer or payee~~  
22 ~~files a petition after the 60 day period, the court shall permit~~  
23 ~~a hearing on the petition only if the petitioner shows that he or~~  
24 ~~she did not receive the notice provided for in subsection (5) and~~  
25 ~~that exigent circumstances prevented him or her from filing.~~

26       ~~(5) Before October 6, 1987, the office of the friend of the~~  
27 ~~court in each judicial district shall do both of the following:~~

1       ~~(a) Send notice by ordinary mail to each payer and payee at~~  
2 ~~his or her last known address informing the payer or payee of the~~  
3 ~~changes in the law made by subsections (1) to (4), and informing~~  
4 ~~the payer or payee that he or she has 60 days from the date the~~  
5 ~~notice was mailed to petition the court for modification of sup-~~  
6 ~~port payments due prior to July 6, 1987.~~

7       ~~(b) Publish notice in at least 1 newspaper having general~~  
8 ~~circulation in the judicial circuit or county informing payers~~  
9 ~~and payees of the changes in the law made by subsections (1) to~~  
10 ~~(4), and informing them that they have 60 days from the date the~~  
11 ~~notice was published to petition the court for modification of~~  
12 ~~support payments due prior to July 6, 1987.~~

13       (3) INTEREST SHALL BE ADDED TO A SUPPORT PAYMENT EACH DAY  
14 AFTER THE DATE THE PAYMENT IS DUE, AND COMPOUNDED ANNUALLY, BASED  
15 ON A RATE OF INTEREST EQUAL TO 1% PLUS THE AVERAGE INTEREST RATE  
16 PAID AT AUCTIONS OF 5-YEAR UNITED STATES TREASURY NOTES DURING  
17 THE 6 MONTHS IMMEDIATELY PRECEDING JULY 1.

18       (4) ~~-(6)-~~ This section ~~shall~~ DOES not apply to an ex parte  
19 interim support order or a temporary support order entered pursu-  
20 ant to supreme court rule.

21       (5) ~~-(7)-~~ The office of the friend of the court shall make  
22 available to a payer or payee the forms and instructions  
23 described in section 17a of the friend of the court act, Act  
24 No. 294 of the Public Acts of 1982, being section 552.517a of the  
25 Michigan Compiled Laws.

26       (6) ~~-(8)-~~ Nothing in this THIS section ~~shall be construed~~  
27 ~~to~~ DOES NOT prohibit a court approved agreement between the

1 parties to retroactively modify a support order. ~~-(9) Nothing in~~  
 2 ~~this~~ THIS section ~~shall be construed to~~ DOES NOT limit other  
 3 enforcement remedies available under this act or any other act.

4 (7) ~~-(10)~~ Every support order that is part of a judgment  
 5 issued by a court of this state ~~,~~ or THAT is an order in a  
 6 domestic relations matter as ~~that term is~~ defined in section 31  
 7 of the friend of the court act, Act No. 294 of the Public Acts of  
 8 1982, shall ~~contain~~ INCLUDE SUBSTANTIALLY the following  
 9 statement: "Except as otherwise provided in section 3 of the  
 10 support and visitation enforcement act, ~~Act No. 295 of the~~  
 11 ~~Public Acts of 1982, being section 552.603 of the Michigan~~  
 12 ~~Compiled Laws~~ MICH. COMP. LAWS <SS>552.603 (1979), a support order  
 13 that is part of a judgment or THAT is an order in a domestic  
 14 relations matter as ~~that term is~~ defined in section 31 of the  
 15 friend of the court act, ~~Act No. 294 of the Public Acts of 1982,~~  
 16 ~~being section 552.531 of the Michigan Compiled Laws~~  
 17 MICH. COMP. LAWS <SS>552.531 (1979), is a judgment on and after the  
 18 date each support payment is due, with the full force, effect,  
 19 and attributes of a judgment of this state, and is not, on and  
 20 after the date it is due, subject to retroactive modification."

21 Sec. 7. (1) If the fixed amount of arrearage determined  
 22 under section 11(1) of the friend of the court act, being section  
 23 552.511 of the Michigan Compiled Laws, is reached, the office of  
 24 the friend of the court immediately shall send notice of the  
 25 arrearage to the payer by ordinary mail to his or her last known  
 26 address. The notice to the payer shall contain ALL OF the  
 27 following information:

1 (a) The amount of the arrearage.

2 (b) That the payer's income will be subject to an order of  
3 income withholding and the amount to be withheld.

4 (c) That the order of income withholding will be applied to  
5 current and subsequent employers and periods of employment.

6 (d) That the order of income withholding will take effect 14  
7 days after the date on which the notice was sent, unless the  
8 payer responds by requesting a hearing.

9 (e) That, at the hearing, the payer may contest the with-  
10 holding, but only on the grounds that the withholding is not  
11 proper because of a mistake of fact concerning the amount of cur-  
12 rent or overdue support or the identity of the payer.

13 (f) That if the hearing is held before a referee, the payer  
14 has a right to a de novo hearing before a circuit court judge.

15 (g) That if the payer believes that the amount of support  
16 should be modified due to a change in circumstances, the payer  
17 may file a petition with the court for modification of the sup-  
18 port order.

19 (H) THAT THE ARREARAGE MAY BE REFERRED TO A COLLECTION  
20 AGENCY FOR COLLECTION AS PROVIDED IN SECTION 26.

21 (2) A copy of the notice provided for in subsection (1)  
22 shall be sent by ordinary mail to each recipient of support.

23 (3) ~~—A~~ WITHIN 14 DAYS AFTER A NOTICE IS SENT UNDER  
24 SUBSECTION (1), THE payer to whom THE notice is sent ~~under sub-~~  
25 ~~section (1), within 14 days after the date on which the notice~~  
26 ~~was sent,~~ may request a hearing on the issue of whether the  
27 order of income withholding should take effect, in which case the

1 order ~~of income withholding~~ shall be delayed pending the  
2 outcome of the hearing.

3       (4) A referee or circuit judge shall hold a hearing  
4 requested under this section within 14 days after the date of the  
5 request. If, at the hearing, the payer establishes that the  
6 withholding is not proper because of a mistake of fact concerning  
7 the amount of current or overdue support or the identity of the  
8 payer, the referee or circuit judge may direct that the order of  
9 income withholding be delayed until ~~such~~ THE time ~~as~~ the ref-  
10 eree or judge determines. If the referee or judge finds against  
11 the payer, the order of income withholding shall take effect  
12 immediately, and a copy of the order of income withholding and  
13 the notice described in section 9 shall be mailed to the payer  
14 and the payer's sources of income as provided in section 11.

15       (5) If the hearing provided under subsection (4) is held  
16 before a referee, either party may request a de novo hearing as  
17 provided in section ~~7(5)~~ 7 of the friend of the court act,  
18 being section 552.507 of the Michigan Compiled Laws.

19       (6) If a petition for modification of the support order is  
20 filed by or on behalf of a payer and is pending at the date  
21 scheduled for a hearing under subsection (4), the court may con-  
22 solidate the hearing under subsection (4) and a hearing on the  
23 petition for modification.

24       (7) All proceedings under this section shall be completed  
25 within 45 days after the date that notice was sent under subsec-  
26 tion (1), unless otherwise permitted by the court upon a showing  
27 of good cause.

1        SEC. 26. IF A SUPPORT ARREARAGE HAS ACCRUED, THE OFFICE OF  
2 THE FRIEND OF THE COURT MAY REFER THE DEBT FOR COLLECTION BY A  
3 COLLECTION AGENCY AS THAT TERM IS DEFINED IN SECTION 901 OF THE  
4 OCCUPATIONAL CODE, ACT NO. 299 OF THE PUBLIC ACTS OF 1980, BEING  
5 SECTION 339.901 OF THE MICHIGAN COMPILED LAWS. IF THE COLLECTION  
6 AGENCY CHARGES A FEE OR COMMISSION FOR THE COLLECTION OF THE  
7 DEBT, THE AMOUNT OF THAT FEE OR COMMISSION SHALL BE ADDED TO THE  
8 ARREARAGE AMOUNT AND COLLECTED FROM THE PAYER. A COLLECTION  
9 AGENCY SHALL NOT CHARGE MORE THAN ITS STANDARD FEE OR COMMISSION  
10 FOR THE COLLECTION OF A DEBT REFERRED UNDER THIS SECTION.