

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 790 (as enrolled)
Senate Bill 800 (as enrolled)
Senate Bill 801 (as enrolled)
Senate Bill 802 (as enrolled)
Senate Bill 803 (as enrolled)
Senate Bill 804 (as enrolled)

PUBLIC ACT 63 of 1998
PUBLIC ACT 95 of 1998
PUBLIC ACT 113 of 1998
PUBLIC ACT 96 of 1998
PUBLIC ACT 334 of 1998
PUBLIC ACT 112 of 1998

Sponsor: Senator Joel D. Gougeon (Senate Bills 790, 802, & 804)
Senator Robert Geake (Senate Bills 800 & 801)
Senator Gary Peters (Senate Bill 803)
Senate Committee: Families, Mental Health and Human Services
House Committee: Human Services and Children

Date Completed: 12-21-98

CONTENT

The bills amended various statutes to do the following:

- Authorize the Friend of the Court (FOC) to issue administrative subpoenas.
- Provide for the administrative adjustment of child support arrearage payments.
- Make various procedural changes concerning paternity actions.
- Provide for genetic paternity testing.
- Provide for the suspension of recreational or sporting licenses for noncompliance with a support or parenting time order.
- Specify information that must be contained on support orders, including a requirement that the parties inform the FOC of their Social Security and driver's license numbers.
- Limit the grounds for a hearing on income withholding.
- Provide that past due support is a lien against the real and personal property of the payer.
- Provide that a payer who is in arrears may be ordered to participate in a work activity, if the child is receiving financial assistance.
- Require the Office of Child Support to develop and implement a data matching system to identify assets of, and facilitate the collection of child support from, payers who have accounts at financial

institutions.

- Provide for the collection of information and records from financial institutions and other entities.

Senate Bill 790

Overview

The bill amended the Friend of the Court Act to authorize the Friend of the Court to issue subpoenas; provide for the administrative adjustment of support arrearage payments; require an FOC office to initiate proceedings to enforce another state's support order; create an exception to the requirement that an employer provide a parent's Social Security number; and include court proceedings arising out of the Uniform Interstate Family Support Act in the FOC Act's definition of "domestic relations matter".

Subpoenas

The bill permits the FOC or his or her designee to issue an administrative subpoena to require any public or private entity doing business in Michigan, that employs or has employed a parent, to furnish any current employment information in the entity's possession that pertains to a parent and that is needed to establish, modify, or enforce a support order. The officers or employees of the entity must furnish the information within 15 days after the entity receives the subpoena. The bill specifies that

these provisions do not abrogate a confidentiality privilege established by law. (The bill defines “current employment” as employment within one year before an FOC request for information.)

If an FOC request or subpoena for information is disobeyed, the FOC or his or her designee may petition the circuit court in the county in which the inquiry is made to require the production of books, papers, and documents. In the case of refusal to obey a subpoena or request for information, the court may issue an order requiring the person or other entity to appear and to produce books, records, and papers if so ordered. Failure to obey the court order may be punished by the court as contempt.

The bill provides that an employer, former employer, or other entity is not be liable under Federal or State law to a person or governmental entity for a disclosure of information to the FOC or for any other action taken by the employer, former employer, or other entity in good faith to comply with these requirements.

Child Support Formula

The Act requires the State FOC Bureau to develop a formula to be used in establishing and modifying a child support amount and health care obligation. Under the bill, the formula must include guidelines for setting and administratively adjusting the amount of periodic payments for overdue support, including guidelines for adjusting arrearage payment schedules when the current support obligation for a child terminates and the payer owes overdue support.

The bill requires an FOC office to use guidelines provided in the child support formula to adjust arrearage payment schedules administratively. In making an administrative adjustment, the office must follow procedures to afford the payer due process, including at least notice, an opportunity for an administrative hearing, and an opportunity for an appeal on the record to an independent administrative or judicial tribunal.

Enforcement Proceedings

The bill requires an FOC office, upon request of another state’s child support agency, to initiate and carry out certain proceedings to enforce support orders entered in the other state, without the need to register the order as a domestic relations matter in Michigan. The order must be enforced using automated administrative enforcement actions

authorized under the Support and Parenting Time Enforcement Act.

Social Security Number

Under the Friend of the Court Act, upon the request of an FOC office, an employer or former employer of a parent must provide certain information related to the parent. (Previously, the Act referred to a custodial parent or an absent parent. The bill refers to a parent who is or was employed by the employer as an employee or independent contractor.) The required information includes the parent’s Social Security number; under the bill, however, this requirement does not apply if the parent is exempt under Federal law from obtaining a Social Security number or is exempt under Federal or State law from disclosure of his or her Social Security number under these circumstances. The FOC must inform the parent of this possible exemption.

Senate Bill 800

The bill amended the Natural Resources and Environmental Protection Act to require that the Department of Natural Resources comply with an order for suspension of a recreational or sporting license issued under the Support and Parenting Time Enforcement Act, within seven days after receiving the suspension order. An order rescinding a suspension order issued under that Act will be effective upon its entry by the court and purchase by the licensee of a replacement license.

Senate Bill 801

Paternity Actions

Under the Paternity Act, a paternity action may be brought by a mother, father, the Family Independence Agency (FIA), or a child who became 18 years of age after August 15, 1984, and before June 2, 1986. Upon the filing of a complaint, the court must issue a summons against the named defendant. Previously, if the defendant did not file and serve a responsive pleading, the court was required to enter a default judgment. Under the bill, the court is permitted to enter a default judgment. The bill deleted a provision under which either party could demand a jury trial.

The bill also deleted a provision of the Act that allowed the judge in a paternity proceeding to make a judgment a lien upon the defendant’s real property.

Under the bill, an action to determine paternity may not be brought under the Act if the child's father acknowledges paternity under the Acknowledgment of Parentage Act, or if the child's paternity is established under the law of another state. (Previously, the Act provided that an action to determine paternity was not required under those circumstances.)

The Act specifies that the parents of a child born out of wedlock are liable for his or her funeral expenses and that the father is liable to pay the expenses of the mother's confinement and expenses in connection with her pregnancy, as the court in its discretion considers proper. The bill also requires the court to admit in a paternity proceeding a bill for funeral expenses, expenses of the mother's confinement, or expenses in connection with the mother's pregnancy, without requiring foundation testimony. The bill for expenses constitutes prima facie evidence.

Genetic Testing

Under the bill, if the parties fail, after service of process, to consent to an order naming the man as the child's father within the time permitted for a responsive pleading, then the FIA (or its designee) may file and serve both the mother and the alleged father with a notice requiring that both of them and the child appear for genetic paternity testing. If the mother, alleged father, or child does not appear, the FIA may apply to the court for an order compelling genetic paternity tests, or may seek other relief as permitted by statute or court rule.

If the FIA requires a party to appear for genetic paternity testing, or if a court orders genetic paternity testing for an individual, then the FIA or the party requesting the court-ordered testing must serve notice of the testing on the mother and the alleged father. The notice must explain all of the following:

- The test to be performed.
- The purpose and potential uses of the test.
- How the test results will be used to establish paternity or nonpaternity.
- How the individual will be provided with the test results.
- The individual's right to keep the test results confidential.

If the FIA paid for the genetic testing expenses, the court may order repayment by the alleged father if the court declares paternity. Documentation of the expenses is admissible as evidence of the amount,

and constitutes prima facie evidence of the amount of the expenses without foundation testimony.

Except as otherwise provided in the Act, a person may not disclose information obtained from genetic paternity testing that is authorized under the Act. A person may not sell, transfer, or offer testing material obtained under the Act except as authorized. (The bill defines "testing material" as any substance or information used for or produced by genetic paternity testing conducted under the Act, other than a report submitted to a court for a paternity determination.)

If an alleged father who is tested as part of a paternity action is found to be the child's father, the contracting laboratory must retain the genetic testing material of the father, mother, and child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. If a man is found not to be the child's father, the court must order his genetic testing material to be destroyed after its use in the paternity action, and the genetic testing material of the mother and child to be retained for no longer than the period of years prescribed by the national standards. A contracting laboratory must destroy an individual's testing material as required and must notify the adult individual, or the parent or legal guardian of a minor individual, by certified mail that the material was destroyed.

A contracting laboratory, the FIA, or another entity involved with the genetic paternity testing must protect the confidentiality of testing material, except as required for a paternity determination under the Act. The court, its officers, and the FIA may not use or disclose testing material for a purpose other than the paternity determination.

A violation of these provisions is a misdemeanor punishable by a maximum fine of \$5,000. A second or subsequent violation is a misdemeanor punishable by imprisonment for up to one year and/or a fine of up to \$10,000.

Senate Bill 802

The bill amended the divorce Act to specify that, if alimony or an allowance for the support and education of the children is awarded to either party, the amount of the alimony or allowance constitutes a lien on the personal and real property of the adverse party as provided in the Support and Parenting Time Enforcement Act (pursuant to Senate Bill 803). Previously, those amounts constituted a lien "as the court by its judgment shall

direct”.

Senate Bill 803

Overview

The bill amended the Support and Parenting Time Enforcement Act to specify information that a support order must contain; provide that past due support is a lien against the payer’s property; apply various license sanctions for unpaid support to recreational and sporting licenses, in addition to occupational and driver’s licenses; include orders of dependent health care coverage in various provisions pertaining to the withholding of support payments by a payer’s source of income; and allow a court to order certain payers to participate in a work activity.

Support Order Information

The bill requires that every support order include the name, address, and telephone number of the payer’s current source of income, and a requirement that both the payer and the payee inform the FOC of his or her Social Security number and driver’s license number. The requirement to provide a Social Security number does not apply to a payer or payee who demonstrates that his or she is exempt under law from obtaining a Social Security number or who for religious convictions is exempt under law from disclosing his or her Social Security number under these circumstances. The court must inform the payer and payee of this possible exemption.

Support Arrearage/Income Withholding

The Act provides that, if a fixed amount of arrearage is reached, the FOC must notify the payer of specified information, including the amount of the arrearage, that the payer’s income is subject to income withholding, and that the income withholding will be applied to current and subsequent employers and periods of employment. Previously, the notice had to state that the order of income withholding would take effect 14 days after the date on which the notice was sent, unless the payer requested a hearing. Under the bill, the notice must inform the payer that the order of income withholding is effective and notice to withhold income will be sent to the payer’s source of income. The notice also must state that income withholding will apply to other sources of income, in addition to current and subsequent employers and periods of employment. The bill allows the payer to request a hearing only on ground that the

withholding is not proper because of a mistake of fact concerning the amount of current or overdue support or the identity of the payer. (Previously, a payer could request a hearing on the issue of whether the order of income withholding should take effect, and the income withholding had to be delayed pending the outcome of the hearing.)

The bill allows a court to find a source of income in contempt and fine the source of income if it is served with a notice of income withholding and fails to comply with the order or to pay withheld amounts to the Friend of the Court. (Previously, a court could find a source of income in contempt if it failed to comply with the order.)

The bill provides that, if a support arrearage has accrued and there is reason to believe that the payer transferred title or ownership of real or personal property without fair consideration, the FOC must initiate proceedings to have the transfer set aside as provided in the Uniform Fraudulent Conveyance Act or obtain a settlement in the form of full payment of the arrearage or in periodic repayments, as is possible in the best interest of the support recipient.

Lien on Payer’s Property

Previously, after notice to the payer and an opportunity for a hearing, a court could impose a lien for the amount of any past due support on real or personal property of the payer. The bill provides, instead, that the amount of past due support that accrues under a judgment or under the law or another state, constitutes a lien in favor of the support recipient against the real and personal property of a payer, other than financial assets pledged to a financial institution as collateral or financial assets to which a financial institution has a prior right of set off or other lien. The lien is effective at the time that support is due and unpaid and continues until the amount of past due support is paid in full or the lien is terminated by the support enforcement agency. Liens that arise in other states must be accorded full faith and credit if the requirements of the Act are met. A lien created under these provisions is subordinate to any prior perfected lien.

The bill permits the FOC to perfect a lien when an arrearage has accrued in an amount that exceeds the amount of periodic support payments payable for one year under the payer’s support order. Before a lien is perfected in a case in which a support order was issued before the bill’s effective date, the FOC must notify the payer subject to the

support order 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 payable for one year. The FOC must provide a copy of the notice to each of the following:

- A financial institution doing business in this State if the payer has one or more accounts at that financial institution.
- The appropriate agency of another state if the payer holds assets in the other state.

To perfect a lien, the FOC must record it with the register of deeds in the county where the real property is located, or, for personal property, in the appropriate State or county office. A lien takes effect on the date and at the time of that recording.

The FOC must notify the payer by ordinary mail when it perfects a lien against his or her real property, and send a copy of the notice to the recipient of support. The notice must include all of the following:

- The amount of the arrearage.
- That a lien is in effect on the payer's real or personal property.
- That the property is subject to seizure unless the payer responds by paying the arrearage or requesting a review within 21 days after the notice is mailed.
- That, at the review, the payer may object to the lien and proposed action based on a mistake of fact concerning the overdue amount or the payer's identity.
- That, if the payer believes that the amount of support ordered should be modified because of a change in circumstances, he or she may file a petition with the court for modification of the support order.

Within 21 days after the date the notice is mailed to the payer, he or she may request a review on the lien and the proposed action. If the payer requests a review, the FOC must schedule it within 14 days. If the payer establishes at the review that the lien is not proper because of a mistake of fact, the FOC must terminate the lien and, within seven days, notify the applicable entity that the lien is terminated. If a payer fails to request a review, appear for a review, or establish a mistake of fact, the FOC may collect the arrearage by levy upon the payer's property. The FOC must notify the payer at the review or by written notice of its intent to levy. To enforce a lien by levying against an account at a financial institution, the FOC must give

notice in the manner provided by law.

To enforce a lien on real or personal property other than an account, the FOC may order the sale of real property in the manner provided by law for the foreclosure of mortgage liens; order execution of the judgment; appoint a receiver of the property and order the property and its income to be applied to the amount of the judgment; or take any other appropriate action to enforce the judgment. The FOC must mail copy of orders under this provision to the payer and recipient of support.

A payer may request that the FOC terminate a lien against his or her personal and real property on the basis that the payer is no longer in arrears. If that is the case, the FOC must terminate the lien pursuant to law.

Sanctions for Contempt

Under the Act, the court may find a payer in contempt if the court finds that he or she is in arrears and has the capacity to pay some or all of the amount due out of currently available resources. Upon finding a payer in contempt, the court may enter an order committing the payer to the county jail (with or without work release), or committing the payer to a penal or correctional facility not operated by the Department of Corrections. If the payer holds an occupational or driver's license (or, under the bill, a recreational or sporting license), the court may enter an order conditioning a suspension of the license upon noncompliance with an order for payment of the arrearage in one or more scheduled installments. This license sanction may not be ordered unless the court finds that the payer's arrearage exceeds the amount of periodic support payments for six months. (Previously, the arrearage had to exceed three months of periodic payments.)

In addition, under the bill, if the court finds the payer is in arrears and has the capacity to pay some or all of the amount due out of currently available resources, or by the exercise of due diligence the payer could have the capacity to pay and fails or refuses to do so, the court may order the payer to participate in a work activity. The court may enter this order only if the payer's arrearage is under a child support order and a child who is the subject of that order is receiving financial assistance under the Federal Temporary Assistance to Needy Families (TANF) program. The bill specifies that this provision does not alter the court's authority to include provisions in a contempt order concerning a payer's employment or his or her seeking of employment as that authority exists on the bill's effective date. (The bill defines "work activity" as unsubsidized employment; subsidized private sector or public sector employment; work experience, if sufficient private sector employment is unavailable; on-the-job training; job search and job readiness assistance; community service programs; up to 12 months of vocational educational training; job skills training directly related to employment; education directly related to employment, in the case of someone who has not received a high school diploma or a certificate of high school equivalency; or satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of someone who has not completed secondary school or received such a certificate.)

Senate Bill 804

Overview

The bill amended the Office of Child Support Act to require the Office, in cooperation with financial institutions, to develop and implement a system to identify assets of and facilitate the collection of child support from the financial assets of account holders. The bill also provides for the collection of information and records from financial institutions and other entities; requires the Office to enter into an agreement with financial institutions to collect the name, address, Social Security number, and account numbers of parents who owe past due child support; and limits the obligations and liability of financial institutions. In addition, the bill replaced references to "absent parent" with references to "adult responsible for the child", i.e., a parent, relative who has physically cared for the child, putative father, or current or former guardian of a child, including an emancipated or adult child.

Office of Child Support

One of the Office's responsibilities under the Act is to assist any governmental agency or department in locating an adult responsible for the child (formerly, an absent parent). Under the bill, the Office must provide this assistance for any of the following purposes:

- To establish parentage.
- To establish, set the amount of, modify, or enforce support obligations.
- To disburse support receipts.
- To make or enforce child custody or parenting time orders.

The bill also requires the Office to develop and implement in cooperation with financial institutions a data matching and lien and levy system to identify assets of and to facilitate the collection of support from the assets of individuals who have an account at a financial institution and who are obligated to pay support as provided in the Act.

Provision of Information and Records

Previously, upon the request of the Office, a governmental department, board, commission, bureau, or agency was required to provide any information that would assist in implementing the Act. Under the bill, this requirement applies upon the request of either the Office or the state agency of another state that administers a program under the TANF program; and a governmental department, board, commission, bureau, or council, a public or private entity, or a financial

institution, must provide any information or record that assists in implementing the Act. The information and records include, but are limited to, all of the following:

- Information on the current employment, compensation, and benefits of the individual employed as an employee or independent contractor of the entity, including a for-profit, nonprofit, and governmental employer.
- A State or local government agency record, including vital statistics; State or local tax and revenue records including information on residence address, employer, income, and assets; a real and titled personal property record; an occupational, professional, recreational, or sporting license record; a record on the ownership and control of a corporation, partnership, or other business entity; an employment security agency record; a record of an agency administering a public assistance program; a motor vehicle record; a corrections record; and a workers' compensation record.
- Information from the Law Enforcement Information Network.
- Information from a financial institution.
- A public utility or cable television company record.

Under the bill, the Director of the Office of Child Support or the Director's designee may issue an administrative subpoena to require an entity to furnish information or a record in its possession that pertains to a parent or putative father who is or was employed by, or an independent contractor of, that entity and that was demanded by the Office for administering or providing TANF services. The entity's officers or employees must furnish the information or record within 15 days after the entity receives the subpoena. The bill specifies that these provisions do not abrogate a confidentiality privilege established by law.

An entity is not liable to any person for any disclosure of information to the Office or for another action taken in good faith to comply with the Act. In addition, a governmental department, board, commission, bureau, agency, or council or any public or private entity or financial institution is not liable for a wrongful disclosure of information or records if the entity acted in good faith. An entity is liable for a negligent wrongful disclosure of information or records in an amount of the damages incurred or \$1,000, whichever is greater. An entity is liable for a willful wrongful disclosure in an amount of three times the damages incurred or

\$3,000, whichever is greater, plus all costs and reasonable attorney's fees incurred. Each violation gives rise to a separate cause of action for which separate damages may be awarded. Damages include reasonable attorney fees.

If an entity does not comply with a subpoena or request for information or records, the Director or his or her designee may petition the circuit court to require the production of books, papers, and documents. In the case of refusal to comply with a subpoena or request for information, the court may issue an order requiring the person to appear and produce books, records, and papers. Failure to comply may be punished as contempt.

The Act specifies that information obtained by the Office is available to a governmental department, board, commission, bureau, agency, or political subdivision of any state for purposes of administering, enforcing, and complying with the state and Federal laws governing child support. Under the bill, the information also is available to a court of competent jurisdiction and the Federal government. In addition, the information is available for purposes of administering, enforcing, and complying with state and Federal laws governing domestic relations matters, as well as child support.

The bill prohibits the Office from releasing information on an address or other information concerning an adult responsible for a child to the another adult responsible for the child, if the release is prohibited by a court order or if the Office has reason to believe that release of information may result in physical or emotional harm to that adult or to the child. The Office must notify the Federal government and courts about domestic violence or child abuse, pursuant Federal requirements in Part D of Title IV of the Social Security Act (concerning state TANF programs).

Financial Institutions

The bill requires the Office to enter into an agreement with financial institutions doing business in Michigan to collect the name, address, Social Security number, and account numbers for each parent who maintains an account at the financial institution and who owes past due child support as identified by the State. Not more than once each calendar quarter, the Office may request this information from each financial institution.

A financial institution must furnish the information to the Office within 45 days after receiving the

request. As an alternative, within 45 days of the end of the first calendar quarter of every year, a financial institution may submit to the Office, or to the Federal government or its designee, a report of the name, address, Social Security number, and account number of each person who maintains an account on the last day of the first quarter. Within 45 days after the end of each subsequent quarter, the institution must submit to the Office a report of the name, address, Social Security number, and account number of each person who opens a new account during the quarter or closes an account that had been reported in a prior quarter. A financial institution may choose only to furnish information on an account that has a balance of more than \$500 at the time the request is processed.

Unless otherwise required by law, a financial institution that furnishes a report or provides information as described above, must not disclose to a depositor or an account holder that his or her name has been received from or furnished to the Office or to the Federal government or its designee. A financial institution may disclose that the Office, or the Federal government or its designee, has the authority to request information on depositors or account holders and that the institution may provide that information to the Office.

A financial institution incurs no obligation or liability to a depositor, account holder, or other person or entity arising from the provision of a report or information to the Office, to an Office agent or representative, or to the Federal government or its designee under the Act, or from the failure to disclose to depositor, account holder, or other person that the name of a person was included in the report or information. A financial institution incurs no obligation or liability to the Office or another person or entity for an error or omission made in good faith compliance with the Act.

A financial institution incurs no obligation or liability for blocking, freezing, placing a hold upon, surrendering, or otherwise dealing with a person's or entity's financial assets in response to a lien imposed or information provided pursuant to the Act. A financial institution is not obligated to block, freeze, place a hold upon, surrender, or otherwise deal with a person's or entity's financial assets until it is served with and has a reasonable opportunity to act upon a subpoena, summons, warrant, court order, administrative order, lien, or levy served upon the institution according to the laws of this State.

A financial institution that surrenders assets to the Friend of the Court in response to a lien imposed under State law is discharged from any other obligation or liability to the depositor, account holder, or other person or entity related to the surrendered assets. A financial institution that surrenders assets to the FOC may assess the account holder a service charge of up to 10% of the amount surrendered, in addition to any other fee or charge authorized by the Act or otherwise not prohibited by law.

The bill specifies that the Act does not prohibit a financial institution from doing any of the following:

- Assessing and collecting fees and other charges from an account holder or depositor, including fees and charges for the maintenance and activities of an account.
- Charging back or recouping a deposit to an account.
- Setting off a debt owed to the financial institution from an account held by it.
- Exercising a banker's lien on an account held by the financial institution for a debt owed to it.
- Disclosing information received from the Office to an employee, agent, or representative of the financial institution or an affiliate of it for the purpose of complying with the Act and otherwise dealing with a customer or account holder of the financial institution or its affiliate.

MCL 552.502 et al. (S.B. 790)
324.43559 (S.B. 800)
722.711 et al. (S.B. 801)
552.27 (S.B. 802)
552.602 et al. (S.B. 803)
400.231 et al. (S.B. 804)

Legislative Analyst: S. Lowe

FISCAL IMPACT

Senate Bills 790 & 801-803

The bills will have an indeterminate fiscal impact. There is no estimate on total additional costs or a projection on total additional revenue that will result from the bills.

Any new costs to local units of government that result from Federal requirements or implied Federal requirements are not State requirements under the Headlee amendment.

Senate Bill 800

The bill will have no direct fiscal impact on State or local government.

Senate Bill 804

The bill will have an indeterminate fiscal impact on State government. First, an increase in the number of court cases may result from noncompliance with a subpoena for information. At this time it is not certain how many cases will result from noncompliance or how much each case will cost. Second, the Family Independence Agency is required by Federal law to enact these changes in State law. If the State did not have the changes enacted by January 1, 1998, the State could have faced certain financial penalties. The State could have lost Federal funding for the child support programs, projected at \$119 million for FY 1996-97. In addition, the Federal funding for the families cash assistance program, which is projected at \$775 million for FY 1996-97, also could have been at risk.

Fiscal Analyst: B. Bowerman
C. Cole
G. Cutler
M. Tyszkiewicz

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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.