

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
 Revised

House Bill 313
 Judiciary

(Delegate Jones)

Judicial Proceedings

Child Support Enforcement - Financial Institution - Definition

This emergency bill expands the definition of “financial institution” – which may be asked by the Child Support Enforcement Administration (CSEA) to provide information or assistance to enforce parental liability – to include specified “institution-affiliated parties” and State credit unions. It also expands the definition of “financial institution” – which may be required by CSEA to seize and attach accounts of obligors who are in arrears in child support payments – to include State credit unions.

Fiscal Summary

State Effect: Special fund revenues would increase to the extent that the bill facilitates the collection of child support. Enactment of the bill may help prevent the loss of a portion or all of the federal Temporary Assistance to Needy Families (TANF) block grant (\$229.1 million), child support enforcement cooperative reimbursement payments (\$66.8 million), and cooperative reimbursement and incentive payments to the Judiciary for child support enforcement activities (\$2.6 million).

Local Effect: Enactment of the bill may help prevent the loss of up to \$2.5 million in cooperative reimbursement grants from the Judiciary to provide child support services through the clerks of court and federal incentive payments of \$150,000, which provide child support initiatives in local offices.

Small Business Effect: None. Generally, small banks, credit unions, and other financial institutions or affiliated parties that comply with CSEA requests or requirements may assess fees to cover compliance costs and they are shielded from civil liability or criminal penalty for providing information to CSEA or seizing financial account assets pursuant to CSEA notice.

Analysis

Bill Summary: For purposes of provisions allowing CSEA to request information and assistance to enforce parental liability for child support, this emergency bill expands the definition of “financial institution” to include an “institution-affiliated party,” as defined by the Federal Deposit Insurance Act. Under this Act, an institution-affiliated party includes any director, officer, employee, or controlling stockholder (not including a bank holding company) of, or agent for, an insured depository institution. This definition of financial institution is also expanded to include a State credit union that is federally insured, or an institution-affiliated party, as defined in the Federal Credit Union Act. Under this Act, an institution-affiliated party includes any committee member, director, officer, or employee of, or agent for, a federally insured credit union. The bill specifically provides that any reference in the federal statute to federally insured credit unions for the purposes of the definition of “institution-affiliated party” must also be construed to include a State-insured credit union. An institution-affiliated party is not required to provide information and assistance if the affiliated financial institution has otherwise provided the information or assistance to CSEA.

The bill also expands the definition of financial institutions that may be required by CSEA to seize and attach account assets from a child support obligor whose account is \$500 or more in arrears and who has not paid child support for more than 60 days to include a State credit union. The definition does not include an institution-affiliated party that is affiliated with a federal or State credit union.

The bill also provides that institution-affiliated parties are immune from civil liability or criminal penalty for actions taken to provide information or assistance to CSEA as specified in statute.

Current Law: CSEA is authorized to request, from any financial institution, information and assistance to enforce parental liability for child support. However, CSEA may not request information more than four times per year concerning an obligor in arrears in paying child support through a child support enforcement agency. CSEA is authorized to institute an action to attach and seize account assets to satisfy an arrearage of an obligor who is \$500 or more in arrears and who has not paid child support for more than 60 days. If CSEA institutes such an action against an obligor, CSEA is required to send a notice to the financial institution that contains one or more of the obligor’s accounts. The notice must be sent by certified mail, return receipt requested, or by another method acceptable to the financial institution.

“Financial institution” is defined as: (1) a depository institution as defined by the Federal Deposit Insurance Act; (2) a federal credit union as defined in the Federal Credit Union Act; (3) a State credit union that is federally insured; or (4) a benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity.

A financial institution that complies with a request from CSEA by notifying CSEA or submitting a report to CSEA, as specified in statute is not liable under State law to any person for disclosure of information to CSEA or other actions taken in good faith to comply with the law.

Background: Federal welfare reform legislation, known as the Personal Responsibility and Work Opportunity Reconciliation Act, was passed in 1996. In addition to significantly changing the administration of welfare, it also contained numerous provisions changing the administration of child support enforcement. The federal government requires State compliance with all the federal child support enforcement provisions. The federal sanction for noncompliance is loss of up to all of the State block grant for TANF and the grant and incentive payments provided for the State child support enforcement program.

Federal provisions for the Maryland child support enforcement program require that the definition of financial institution, for purposes of the statute requiring the provision of information or assistance to CSEA, be expanded to include institution-affiliated parties, and for the purpose of seizing and attaching the accounts of delinquent obligors that owe child support, be expanded to include State credit unions. Under Maryland law, institution-affiliated parties are not required to provide information to CSEA for child support enforcement activities. In addition, those institutions that may be asked to seize and attach accounts do not include State-insured credit unions.

In October 2002, the Department of Human Resources (DHR) received an official notice of intent to disapprove Maryland's "IV-D" plan from the U.S. Department of Health and Human Services (DHHS). This plan outlines how the State will provide child support enforcement services. The State was given an opportunity for a predecision hearing and that hearing was requested in December. The notice of intent to disapprove the plan is due, in part, to Maryland law, which does not include all eligible financial entities in the definition of financial institutions that may be required to provide information to CSEA. There were also other noncompliance issues cited. DHHS has stated that disapproval of Maryland's IV-D plan could mean that the federal government could withhold the State's entire allotment for the TANF program (\$229.1 million in federal fiscal 2002) and the entire cooperative reimbursement payment for child support services (\$66.8 million). A condition of eligibility for TANF block grants is that Maryland operate a child support enforcement program under an approved IV-D plan.

The Judiciary also advises that it receives federal funding for child support enforcement activities. This funding could also be at risk if Maryland's IV-D program remains out of compliance. The Judiciary has an arrangement with DHR to provide some child support enforcement services through the clerks of the court and masters in the family services program. The Judiciary receives \$2.5 million in federal cooperative reimbursement funds to pay 66% of the salaries of clerks of court and masters who provide those child support services. The remaining 34% of these salaries is financed by general funds. If the federal

funds were withheld, these salaries would still be paid, but additional general funds would be needed.

The Administrative Office of the Courts (AOC) began receiving federal incentive payments for certain child support initiatives in October 2001. AOC currently receives about \$150,000 in federal incentive funds. The monies are used to provide training, improve data management, and establish and operate new programs such as the fatherhood pilot programs that currently exist in two jurisdictions. These programs are funded entirely with federal funds, and would likely not continue if the incentive funds are withheld.

State Fiscal Effect: Special fund revenues could increase to the extent that the provisions in this bill increase child support collections. Temporary cash assistance (TCA) recipients must assign their support rights to the State and federal government as partial reimbursement for TCA payments made on behalf of the children of the obligor; as a result, TCA child support collections are distributed 50% to the State and 50% to the federal government. Any such increase cannot be quantified at this time due to the unavailability of data.

DHR advises that if the provisions of this bill relating to the definition of financial institutions are not enacted, the federal government could rescind the State's entire federal grant for TANF, which totals about \$229.1 million and also rescind the State's entire federal grant for child support enforcement services, which totals \$66.8 million. The formal DHHS notice of intent to disapprove the Maryland plan, as discussed above, indicates that the sanction of withholding the entire TANF block grant and child support enforcement cooperative reimbursement payments is being given serious consideration.

The Judiciary advises that if DHHS disapproves the State's IV-D plan and the full complement of child support enforcement funding is withheld, then that would include \$2.5 million in federal cooperative reimbursement grants that the Judiciary receives for child support functions and \$150,000 in federal incentive payments for child support initiatives.

Local Fiscal Effect: Federal funding for child support services and child support initiatives received by the Judiciary is provided in the form of grants to clerks of court offices and local family services programs. Disapproval of the State IV-D plan could mean withholding of up to \$2.5 million in grants for child support services in local offices. It could also mean withholding \$150,000 in grants to local offices for training, data management, fatherhood programs, and other child support enforcement initiatives.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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