

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 272 (Chairman, Judiciary Committee)
 (By Request – Departmental – Human Resources)

Judiciary Judicial Proceedings

Child Support Enforcement - Affidavit of Support

This departmental bill provides for the execution of an Affidavit of Support by the Child Support Enforcement Administration (CSEA) to establish an obligation for child support that is enforceable in the same manner as a court order for child support.

The bill is effective January 1, 2007.

Fiscal Summary

State Effect: Minimal increase in special fund revenues to the extent the bill increases collection of child support. FY 2007 expenditures increase by \$18,000 (\$11,880 FF/\$6,120 GF) for computer enhancements to monitor Affidavits of Support.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
SF Revenue	-	-	-	-	-
GF Expenditure	6,100	0	0	0	0
FF Expenditure	11,900	0	0	0	0
Net Effect	(\$18,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: The Department of Human Resources has determined that this bill will have minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: This bill authorizes CSEA to execute an “Affidavit of Support.” An executed Affidavit of Support is a legal document that constitutes a legal finding of a support obligation and is executed by CSEA instead of ordered by a court. An Affidavit of Support may be executed by CSEA if a party is receiving child support enforcement services from CSEA under federal law, the paternity of the child has been established, and a support conference has been conducted that resulted in an agreement by the parties. A party to the affidavit has the right to rescind it, in writing, within 60 days of its execution. An affidavit may also be challenged in court by a party on the basis of fraud, duress, or material mistake of fact or that the affidavit is not in accordance with child support guidelines.

Within 30 days after expiration of the 60-day rescission period, CSEA must file the affidavit with the clerk of a circuit court for approval by the court.

An Affidavit of Support must set the obligation amount in accordance with the child support guidelines established in statute. If CSEA determines that application of the guidelines would be inappropriate or unjust, CSEA must make a written finding on the record stating the reasons for departure from the guidelines, as specified in the bill.

A completed Affidavit of Support must contain information about the parties, the children, the support order amount, and be on a standardized form, as specified in the bill. Information regarding the frequency of payment, provisions for medical support, immediate earnings withholding, and procedures to address payment delinquency must also be part of the Affidavit of Support. A party who participates in the affidavit must provide information to CSEA about changes in employment, residence, or medical support. An Affidavit of Support is subject to CSEA review if a party requests modification. Before completing an Affidavit of Support, the parties must be advised orally and in writing of the consequences of executing the affidavit and the right to seek legal counsel.

An Affidavit of Support remains in effect until the child becomes an adult, or the child marries, dies, or becomes self-supporting. An affidavit is effective unless and until superseded by a court order or a subsequently executed Affidavit of Support.

CSEA is required to enforce the affidavit and collect the support obligation, including any arrearages from the date of execution. The affidavit is as enforceable as a court order for child support, including contempt of court proceedings. If either party presents evidence of a material change in circumstances, a new Affidavit of Support may be executed. A subsequently executed Affidavit of Support supersedes a pre-existing child

support order. An Affidavit of Support must be recognized as a child support order by all courts in the State.

Current Law: State law does not provide for the issuance of a document by CSEA that creates a legal obligation to pay child support.

CSEA is required to enforce court orders to pay child support through the coordination of a statewide program for support enforcement, including providing child support enforcement services, as specified in statute. In any proceeding to establish or modify child support, whether *pendent lite* or permanent, the court must use statutory child support guidelines to establish the child support obligation, unless the court finds in writing or on the record that application of the guidelines would be unjust or inappropriate. The court may modify a child support award, pursuant to a motion for modification, with a showing of a material change of circumstances. The court is prohibited, however, from retroactively modifying a child support award. Court-ordered child support remains in effect until the child becomes an adult, or at age 19 if enrolled in secondary school, or until the child marries, or dies, whichever occurs first. While the obligation to pay child support ceases when any of these events occurs, termination is not automatic. The obligor parent must file a motion with the court to officially terminate the support obligation.

Background: CSEA advises that child support enforcement agencies have been moving towards more expedited processes for child support cases. CSEA is currently authorized to execute an Affidavit of Parentage. The Affidavit of Parentage is a legal finding of paternity and has the same enforceability as paternity established through the courts. The Affidavit of Support is intended to quickly establish support obligations without unnecessary delay. The parents would agree to a support obligation as provided by the Maryland child support guidelines. After signing an Affidavit of Support that sets forth rights and responsibilities with regard to the child support obligation, the affidavit would be executed by CSEA.

CSEA advises that child support could be collected sooner and with a reduced incidence of arrearages with an Affidavit of Support. The affidavit would allow immediate issuance of an earnings withholding notice by CSEA, and children would receive support payments sooner. Under current law, parents may agree on the child support obligation, but the agreement is not fully enforceable until the court reviews and signs the order. A court will order an award amount back to the time of the filing for child support. According to CSEA, depending on the amount of time between the filing and the issuance of the order, the obligor is already in arrears and this contributes to an adversarial relationship between the parents. According to CSEA, parents who receive child support services from CSEA under the provisions of this bill could establish a child support obligation in a nonadversarial manner.

State Revenues: Special fund revenues could increase to the extent that this bill increases child support collections. This bill would not change the amount of child support that would be due from obligors, but could enable child support to be collected sooner, thereby decreasing the amount of collections that would fall into arrears. Any such impact is expected to be minimal. CSEA advises that for federal fiscal 2005, 30,415 Temporary Cash Assistance (TCA) cases were processed. TCA recipients must assign their support payments to the State and federal governments as partial reimbursement for TCA payments made on behalf of the children of the obligor. TCA child support collections are distributed 50% to the State and 50% to the federal government. Accordingly, the State and federal governments would share equally in any increase in collection revenues.

State Expenditures: Total fund expenditures are expected to increase \$18,000 in fiscal 2007 only (\$11,880 federal funds/\$6,120 general funds) to implement computer system enhancements to track and monitor the execution of Affidavits of Support. CSEA receives 66% reimbursement for certain enforcement expenditures from the federal government.

Small Business Effect: CSEA advises that the bill's provisions would not change the process by which employers receive earnings withholding notices. As a result, the bill would have minimal economic impact on small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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