

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 71

(Chair, Judicial Proceedings Committee)(By Request -
Departmental - Human Resources)

Judicial Proceedings

Judiciary

**Child Support Enforcement - Attachment and Seizure of Retirement Accounts
and Claims Against Retirement Plans**

This departmental bill authorizes the Child Support Enforcement Administration (CSEA) to administratively garnish the retirement accounts of delinquent obligors in specified circumstances. The bill expands the definition of “account” to include “retirement account” in provisions of law pertaining to reporting of information by financial institutions and administrative seizure and attachment of accounts. The general exemption of retirement plans from the claims of creditors of a beneficiary or participant does not apply to the Department of Human Resources (DHR) for the purpose of child support enforcement.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues to the extent that the bill increases collection of child support. DHR can implement the bill’s changes with existing resources.

Local Effect: None.

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

Analysis

Current Law: CSEA may request information from any financial institution up to four times a year concerning any obligor in arrears in paying child support through a support enforcement agency. The financial institution must report whether the obligor maintains an account with the institution and submit specified information concerning the account.

If an obligor is \$500 or more in arrears of a child support obligation and has not paid child support for more than 60 days, CSEA may institute an action to attach and seize the amount of the arrearage. Upon receiving notice from CSEA, a financial institution must seize funds that are held in specified accounts, including checking, savings, money market mutual fund, and certificate of deposit accounts. Retirement accounts are not included in the definition of “accounts.”

Prior to attaching and seizing the obligor’s accounts, CSEA must send a notice to the obligor advising of the enforcement actions that may be taken, including that the obligor’s accounts may be subject to garnishment. An additional notice is sent once a financial institution has informed CSEA that the account has been seized. An obligor may challenge CSEA’s actions by filing a request for investigation with CSEA or a motion with the circuit court. If CSEA receives a written challenge, it must review the challenge and may release or reduce the amount seized for a mistake of fact or other good cause. The obligor may appeal the results of CSEA’s review to the Office of Administrative Hearings or the circuit court. If a timely challenge is not made, the amount seized is forwarded to CSEA and applied to the obligor’s arrears.

Subject to specified exceptions, retirement accounts are generally exempt from any and all claims of the creditors of the beneficiary or participant, other than claims by the Department of Health and Mental Hygiene.

Background: DHR indicates that the bill will enable CSEA to collect more child support on behalf of Maryland families. It notes that it has delinquent obligors within its caseload who have funds in retirement accounts and otherwise meet the criteria for administrative seizure and attachment of a financial account. Currently, a parent wishing to avoid paying child support can do so by placing the parent’s funds in a retirement account. DHR estimates that this legislation will increase child support collections for Maryland families by as much as \$1.6 million per year.

According to DHR, at least 25 other states, including Pennsylvania, allow retirement accounts to be subject to garnishment for delinquent obligors. In 2012, CSEA received the largest payment on a single case in the history of Maryland’s child support program as a direct result of garnishing a retirement account in another state. The Circuit Court of

Baltimore City issued a judgment in the amount of \$395,000 against an obligor for child support arrearages. After the obligor moved to Pennsylvania, CSEA filed an interstate petition to register the judgment in Pennsylvania for enforcement. Pennsylvania successfully garnished the full \$395,000 from a retirement account belonging to the obligor.

DHR further advises that this departmental bill is part of its broader strategy to improve collections. The U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement provides incentive payments to states for performance in five areas, including the percentage of cases paying on arrears. In federal fiscal 2011, CSEA received payments for 61.57% of cases with arrears, which resulted in the State ranking of 26 (out of 51) for this performance measure. DHR has set a goal for CSEA to be in the top 10 performing states in each measure and notes that 11 of the top 20 performing states have legislation allowing the garnishment of retirement accounts.

State Fiscal Effect: Special fund revenues may increase to the extent that the bill increases child support collections on behalf of temporary cash assistance (TCA) recipients. 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. Accordingly, the State and federal governments would share equally in any increase in collection revenues. Any such increase cannot be quantified at this time due to the unavailability of data; however, any potential impact on special fund revenues is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Legislative Services

Fiscal Note History: First Reader - January 8, 2013
mc/kdm Revised - Senate Third Reader - March 20, 2013

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Child Support Enforcement-Information from Financial Institutions –
Claims Against Retirement Plans

BILL NUMBER: SB 71

PREPARED BY: Maryland Dept of Human Resources

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.