

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 181 (Chair, Judicial Proceedings Committee)(By Request -
 Departmental - Human Resources)

Judicial Proceedings

Family Law - Child Support - Presumptive Support Obligation

This departmental bill authorizes the Child Support Enforcement Administration (CSEA) to issue a presumptive support obligation in specified circumstances. The presumptive support obligation is a legal finding of a support obligation that remains in effect until otherwise determined or modified by the court.

Fiscal Summary

State Effect: Federal fund expenditures decrease by an estimated \$1.4 million in FY 2014 and by \$1.9 million annually thereafter, reflecting a reduction in Temporary Cash Assistance (TCA) payments as a result of families whose incomes will exceed eligibility requirements once they begin receiving child support. Minimal increase in special fund revenues due to additional child support collected. The bill’s changes do not materially affect the workload for the Judiciary.

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	-	-	-	-	-
FF Expenditure	(\$1.4)	(\$1.9)	(\$1.9)	(\$1.9)	(\$1.9)
Net Effect	\$1.4	\$1.9	\$1.9	\$1.9	\$1.9

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

Local Effect: The bill’s changes do not materially affect the workload of the circuit courts.

Small Business Effect: The Department of Human Resources (DHR) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: If parties fail to come to an agreement after a child support conference, the amount of the support obligation calculated by CSEA in accordance with child support guidelines or any appropriate deviation from the guidelines must constitute a presumptive support obligation without prejudice to the rights of either party. Either party may seek a judicial determination of support or challenge the presumptive support obligation. In the absence of a completed affidavit of support, the parties must be advised orally and in writing of the legal consequences of a presumptive support obligation, the right to seek legal counsel, and the right to have the support order determined by the court.

A presumptive support obligation must be completed on a standardized form developed by CSEA. Items specified in statute for inclusion in an affidavit of support must be included in a presumptive support obligation.

The bill repeals the right of any party to rescind an affidavit of support within 60 days after executing the affidavit and the requirement for CSEA to file the affidavit with the circuit court for approval by the court within 30 days after expiration of the 60-day rescission period. The bill also repeals language specifying that the affidavit of support may be challenged on the basis of fraud, duress, or material mistake of fact or that the affidavit of support is not in accordance with the child support guidelines. Instead, the bill establishes that any party to an affidavit of support or a presumptive support obligation may challenge the affidavit or obligation by filing a petition with the court for judicial determination of support. CSEA must file by motion an affidavit of support or presumptive support obligation with the clerk of a circuit court for approval by the court.

Current Law: An affidavit of support may be executed 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. An executed affidavit of support constitutes a legal finding of a support obligation. 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. CSEA must set the support 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 statute.

An affidavit of support must contain (1) a statement that the executed affidavit is a legal document and constitutes a legal finding of a support obligation; (2) the date of the signed affidavit of support; (3) the full names of the parties; (4) the full name and birth date of each child for whom support is to be paid; (5) the support order amount, including an amount for current support and an amount for arrears, if appropriate; (6) the frequency of child support to be paid, including the payment due date; (7) a provision for making child support payments payable to the State disbursement unit; (8) a provision for medical support; (9) a provision for immediate earnings withholding; (10) a statement that if the obligor becomes delinquent in fulfilling the obligation, any enforcement remedy provided in accordance with State and federal law may be applied; (11) a statement that it is the responsibility of each party under the affidavit of support to advise CSEA of any change of address, employment, or medical support; (12) a statement that the provisions of the affidavit are subject to review by CSEA for possible modification at the request of any party; (13) a statement that the provisions of the affidavit of support remain in effect until the child becomes an adult, or the child marries, dies, or becomes self-supporting; (14) a statement that the provisions of the affidavit of support remain in effect until superseded by a court order or a subsequently executed affidavit of support; (15) any other information that CSEA considers appropriate; and (16) the signatures of all parties and the date of the signatures. 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.

In the absence of an affidavit of support, child support must be ordered by a court. In a proceeding to establish or modify child support, whether *pendente lite* or permanent, the court is required to use the child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. There is a rebuttable presumption that the amount of child support that would result from the application of the guidelines is the correct amount of support to be awarded. The presumption may be rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case.

Background: DHR advises that approximately half of its cases are referred to the courts for order establishment because one of the parties does not agree to the support amount as determined by the child support guidelines. Parents who do not consent to the amount of support as determined by the guidelines delay entry of the support obligation, which increases the time that children and custodial families have to wait to receive financial support from noncustodial parents. DHR estimates that streamlining the process by allowing a presumptive support order based on the child support guidelines reduces delays in the establishment, collection, and distribution of support for Maryland families by an average of 12 weeks, and also significantly decreases accumulated arrears based on retroactivity. DHR further advises that 23 other states, including Pennsylvania and

Virginia, as well as the District of Columbia, have laws that allow their child support enforcement units to administratively establish presumptive support orders.

State Fiscal Effect: Federal fund expenditures decrease by \$1,424,574 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date and by \$1,899,432 annually thereafter by expediting the ability for custodial parents to receive child support due to the establishment of a presumptive support obligation. DHR advises that approximately 4,753 of its cases annually are referred to the circuit courts for order establishment. During that time, which averages three months, the noncustodial parent is not receiving child support. In approximately 1,426 of these cases, the custodial parent's income without the child support meets eligibility requirements for Temporary Cash Assistance (TCA), with an average monthly payment of \$444 per family. Permitting CSEA to establish a presumptive support obligation decreases federal fund expenditures, as once a number of these families begin receiving child support, their income will exceed the eligibility threshold and they will no longer qualify for TCA.

Some families may remain eligible for TCA even after they begin receiving child support. TCA recipients must assign their support rights to the State and federal government as partial reimbursement for TCA payments 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 due to a reduction in the time the recipients must wait to begin receiving child support; however, any increase is expected to be minimal.

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

Fiscal Note History: First Reader - February 8, 2013
mc/kdm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Family Law – Child Support – Presumptive Support Obligation

BILL NUMBER: SB 181

PREPARED BY: Maryland Dept of Human Resources
Child support Enforcement Administration

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.