

# SENATE BILL No. 1447

October 6, 2004, Introduced by Senator HAMMERSTROM and referred to the Committee on Families and Human Services.

A bill to amend 1982 PA 295, entitled "Support and parenting time enforcement act," by amending sections 25a, 25b, 25c, 25d, 25e, 25f, 25g, 25h, and 25i (MCL 552.625a, 552.625b, 552.625c, 552.625d, 552.625e, 552.625f, 552.625g, 552.625h, and 552.625i), sections 25a and 25b as amended and sections 25c, 25d, 25e, 25f, 25g, 25h, and 25i as added by 2002 PA 565.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

SENATE BILL No. 1447

1       Sec. 25a. (1) The amount of past due support that accrues  
 2 under a judgment as provided in section 3 or under the law of  
 3 another state constitutes a lien in favor of the recipient of  
 4 support against the real and personal property of a payer, ~~other~~  
 5 ~~than financial assets pledged to a financial institution as~~  
 6 ~~collateral or financial assets to which a financial institution~~  
 7 ~~has a prior right of setoff or other lien.~~ **including, but not**

1 limited to, distribution from a decedent's estate, a claim for  
2 negligence or personal injury, and funds due a payer from a  
3 settlement, civil judgment, worker's compensation order,  
4 settlement, or voluntary payment, or arbitration award. The lien  
5 is effective at the time that the support is due and unpaid and  
6 shall continue until the amount of past due support is paid in  
7 full or the lien is terminated by the **title** IV-D agency.

8 (2) Liens that arise in other states shall be accorded full  
9 faith and credit when the requirements of section 25b or 25c are  
10 met.

11 (3) A lien created under subsection (1) is subordinate to a  
12 prior perfected lien. All liens created under subsection (1) and  
13 described in subsection (2) have equal priority.

14 (4) Before a lien is perfected or levied under this act, the  
15 title IV-D agency shall send a notice to the payer subject to the  
16 support order informing the payer of the imposition of liens by  
17 operation of law and that the payer's real and personal property  
18 can be encumbered or seized if an arrearage accrues in an amount  
19 that exceeds the amount of periodic support payments payable  
20 under the payer's support order for the time period specified in  
21 this act.

22 (5) The title IV-D agency or another person required to  
23 provide notice under this section or sections 25b to 25i shall  
24 provide notice by paper, unless the person to be notified agrees  
25 to notice by other means. The title IV-D agency or other person  
26 providing notice under this section or sections 25b to 25i shall  
27 complete and preserve proof of service of the notice in a form

1 substantially conforming to the requirements for proof of service  
2 under the Michigan court rules.

3 (6) A lien under subsection (1) is not created against any of  
4 the following:

5 (a) Financial assets pledged to a financial institution as  
6 collateral.

7 (b) Financial assets to which a financial institution has a  
8 prior right of setoff or other lien.

9 (c) Property or allowances described in sections 2401 to 2404  
10 of the estates and protected individuals code, 1998 PA 386, MCL  
11 700.2401 to 700.2404.

12 (d) Trusts regulated under article VII of the estates and  
13 protected individuals code, 1998 PA 386, MCL 700.7101 to  
14 700.7511.

15 (e) Funds from a claim for negligence or personal injury or  
16 from a settlement, civil judgment, worker's compensation order,  
17 settlement, or voluntary payment, or arbitration award that are  
18 owed for any of the following:

19 (i) For attorney fees.

20 (ii) For court costs.

21 (iii) To the medicaid program under the social welfare act,  
22 1939 PA 280, MCL 400.1 to 400.119b.

23 (iv) For medical services and reimbursements for payments  
24 made for medical services either to or by a nonprofit health care  
25 corporation, health maintenance organization, health insurer, or  
26 self-funded health plan.

27 (v) For an administrative fee for processing the lien.

1           (vi) For other costs related to the award, redemption, order,  
2 settlement, or voluntary payment.

3           Sec. 25b. (1) A remedy provided by this section is  
4 cumulative and does not affect the availability of another remedy  
5 under this act or other law.

6           (2) Except for ~~a financial asset~~ **financial assets or funds**  
7 to which section 25c applies, the title IV-D agency may perfect a  
8 lien created under section 25a upon the real or personal property  
9 of the payer when an arrearage has accrued in an amount that  
10 exceeds 2 times the monthly amount of periodic support payments  
11 payable under the payer's support order.

12           (3) If the arrearage under subsection (2) is reached and the  
13 title IV-D agency has determined that the delinquent payer holds  
14 real or personal property, other than ~~a financial asset~~ **for**  
15 **financial assets or funds** to which section 25c applies, the title  
16 IV-D agency may perfect the lien. The title IV-D agency shall  
17 perfect a lien on property to which this section applies in the  
18 same manner in which another lien on property of the same type is  
19 perfected.

20           (4) The title IV-D agency shall notify the payer when the  
21 title IV-D agency has perfected a lien against real or personal  
22 property of the payer. The notice shall be sent by ordinary mail  
23 to the payer's last known address, and a copy of the notice shall  
24 be sent by ordinary mail to the recipient of support. A notice  
25 under this subsection shall include all of the following:

26           (a) The amount of the arrearage.

27           (b) That a lien is in effect on the real or personal property

1 of the payer.

2 (c) That the property is subject to seizure unless the payer  
3 responds by paying the arrearage or requesting a review within 21  
4 days after the date of mailing the notice.

5 (d) That, at the review, the payer may object to the lien and  
6 to proposed action based on a mistake of fact concerning the  
7 overdue support amount or the payer's identity.

8 (e) That, if the payer believes that the amount of support  
9 ordered should be modified because of a change in circumstances,  
10 the payer may file a petition with the court for modification of  
11 the support order.

12 (5) Within 21 days after the date on which the notice  
13 described in subsection (4) is mailed to a payer, the payer may  
14 request a review on the lien and the proposed action. If the  
15 payer requests a review under this subsection, the title IV-D  
16 agency shall conduct the review within 14 days after the date of  
17 the request.

18 (6) If, at the review, the payer establishes that the lien is  
19 not proper because of a mistake of fact, the title IV-D agency  
20 shall terminate the lien and, within 7 days, notify the  
21 applicable entity that the lien is terminated.

22 (7) If the payer fails to request a review, to appear for a  
23 review, or to establish a mistake of fact, the title IV-D agency  
24 may collect the arrearage by levy upon any property belonging to  
25 the payer as provided in this section. The title IV-D agency  
26 shall notify the payer at the review or by written notice of its  
27 intent to levy.

1 (8) To enforce a lien on real property or personal property,  
2 the title IV-D agency may sell the real property in the manner  
3 provided by law for the judicial foreclosure of mortgage liens;  
4 apply to the circuit court for an order to execute the judgment,  
5 to appoint a receiver of the real and personal property subject  
6 to the lien, and to order the property and its income to be  
7 applied to the amount of the judgment; or take any other  
8 appropriate action to enforce the judgment. The title IV-D  
9 agency shall mail a copy of orders under this subsection to the  
10 payer and recipient of support at his or her last known address.

11 (9) A payer may request that the title IV-D agency terminate  
12 a lien against the real and personal property of the payer on the  
13 basis that the payer is no longer in arrears. If the payer is no  
14 longer in arrears, the title IV-D agency shall terminate the lien  
15 in accordance with law.

16 (10) An entity is not liable under any federal or state law  
17 to any person for any disclosure of information to the title IV-D  
18 agency under this section or for any other action taken in good  
19 faith to comply with the requirements of this section.

20 Sec. 25c. (1) A remedy provided by this section is  
21 cumulative and does not affect the availability of another remedy  
22 under this act or other law.

23 (2) If a payer's financial assets held by a financial  
24 institution **or if a payer's funds owed pursuant to a worker's**  
25 **compensation order, settlement, or voluntary payment** are subject  
26 to a lien under section 25a and an arrearage has accrued in an  
27 amount that exceeds 2 times the monthly amount of periodic

1 support payments payable under the payer's support order, the  
2 title IV-D agency may levy against ~~the payer's~~ **those** financial  
3 assets ~~held by a financial institution~~ **or funds**. To levy  
4 against a payer's financial assets **or funds**, the title IV-D  
5 agency shall serve the financial institution holding the  
6 financial assets **or the carrier** with a notice of the lien and  
7 levy, directing the financial institution **or carrier** to freeze  
8 ~~the payer's~~ **those** financial assets ~~held by the financial~~  
9 ~~institution~~ **or funds**.

10 (3) The office of child support, in consultation with the  
11 state court administrative office, shall create the form that is  
12 required for the notice to a financial institution **or carrier**  
13 under subsection (2). The form shall include, or provide for  
14 inclusion of, at least all of the following:

15 (a) The levy amount.

16 (b) Information that enables the financial institution **or**  
17 **carrier** to link the payer with his or her financial assets **or**  
18 **funds** and to notify the payer.

19 (c) Information on how to contact the title IV-D agency.

20 (d) Statements setting forth the rights and responsibilities  
21 of the financial institution **or carrier** and payer.

22 (4) A title IV-D agency may withdraw a levy under this  
23 section at any time before the circuit court considers or hears  
24 the matter in an action filed under section 25f. The title IV-D  
25 agency shall give notice of the withdrawal to the payer and  
26 financial institution **or carrier**. Upon receiving notice of a  
27 withdrawal of a levy, the financial institution **or carrier** shall

1 release the payer's financial assets **or funds** by the close of  
2 business on 1 of the following days:

3 (a) If the notice is received before noon, the first business  
4 day after the business day on which the notice is received.

5 (b) If the notice is received at noon or later, the second  
6 business day after the business day on which the notice is  
7 received.

8 (5) As used in this section and sections 25d to 25i,  
9 "carrier" means any of the following:

10 (a) "Carrier" as that term is defined in section 601 of the  
11 worker's disability compensation act of 1969, 1969 PA 317, MCL  
12 418.601.

13 (b) The second injury fund created under section 501 of the  
14 worker's disability compensation act of 1969, 1969 PA 317, MCL  
15 418.501.

16 (c) The self-insurers' security fund created under section  
17 501 of the worker's disability compensation act of 1969, 1969 PA  
18 317, MCL 418.501.

19 Sec. 25d. (1) A financial institution **or carrier** incurs no  
20 obligation or liability to a depositor, account holder, or other  
21 person arising from the furnishing of information under sections  
22 25c to 25i or from the failure to disclose to a depositor,  
23 account holder, or other person that the person's name as a  
24 person with an interest in the financial assets **or funds** was  
25 included in the information provided.

26 (2) A financial institution **or carrier** incurs no obligation  
27 or liability to the title IV-D agency or another person for an



1 error or omission made in good faith compliance with sections 25c  
2 to 25i.

3 (3) A financial institution **or carrier** incurs no obligation  
4 or liability for blocking, freezing, placing a hold upon,  
5 forwarding, or otherwise dealing with a person's financial assets  
6 **or funds** in response to a lien or levy imposed or information  
7 provided under sections 25c to 25i.

8 (4) A financial institution **or carrier** is not obligated to  
9 block, freeze, place a hold upon, forward, or otherwise deal with  
10 a person's financial assets **or funds** until served with the notice  
11 of levy in accordance with section 25c. A financial institution  
12 **or carrier** that forwards financial assets to the title IV-D  
13 agency in response to a levy under section 25c is discharged from  
14 any obligation or liability to the depositor, account holder, or  
15 other person with an interest in the financial assets **or funds**  
16 that are forwarded to the title IV-D agency.

17 Sec. 25e. (1) When a financial institution **or carrier**  
18 receives a notice of levy on a payer's financial assets held by  
19 the financial institution **or funds owed pursuant to a worker's**  
20 **compensation order, settlement, or voluntary payment** under  
21 section 25c, the financial institution **or carrier** shall freeze  
22 those financial assets **or funds**. If the payer's financial assets  
23 held by a financial institution **or funds owed pursuant to a**  
24 **worker's compensation order, settlement, or voluntary payment**  
25 exceed the levy amount, the financial institution **or carrier**  
26 shall freeze those financial assets **or funds** up to the levy  
27 amount. A financial institution **or carrier** shall execute the

1 freeze of a payer's financial assets **or funds** under this section  
2 by the close of business on 1 of the following days:

3 (a) If the notice is received before noon, the first business  
4 day after the business day on which the notice is received.

5 (b) If the notice is received at noon or later, the second  
6 business day after the business day on which the notice is  
7 received.

8 (2) After complying with subsection (1), a financial  
9 institution **or carrier** shall give notice of that compliance to  
10 the title IV-D agency, the payer, and each other person with an  
11 interest in the financial assets **or funds** as shown in the  
12 financial institution's **or carrier's** records. A financial  
13 institution's **or carrier's** notice to a payer under this  
14 subsection shall include a copy of the title IV-D agency notice  
15 to the financial institution **or carrier**.

16 Sec. 25f. (1) A payer whose financial assets **or funds** are  
17 levied on under section 25c or a person with an interest in those  
18 assets **or funds** may challenge the levy by submitting a written  
19 challenge with the title IV-D agency at the location specified in  
20 the title IV-D agency notice. A payer or other person with an  
21 interest must submit a written challenge under this section  
22 within 21 days after the financial institution **or carrier** sends  
23 the payer a copy of the title IV-D agency notice as required by  
24 section 25e. A challenge to a levy under section 25c is governed  
25 by this act and is not subject to chapter 4 of the administrative  
26 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. A  
27 payer or other person with an interest who submits a challenge

1 under this subsection may withdraw the challenge at any time by  
2 giving notice of the withdrawal to the title IV-D agency.

3       (2) If the title IV-D agency receives a written challenge  
4 from a payer or other person with an interest within the time  
5 limit required by subsection (1), the title IV-D agency shall  
6 notify the financial institution **or carrier** about the challenge  
7 and, within 7 days, shall review the case with the challenger.  
8 The title IV-D agency shall consider only a mistake in the  
9 payer's identity or in the amount of the payer's past due  
10 support, or another mistake of fact, as cause to release or  
11 modify the levy. If the title IV-D agency determines that a  
12 mistake of fact occurred, the title IV-D agency shall do 1 of the  
13 following:

14       (a) If the mistake is the payer's identity or that the payer  
15 does not owe past due support in an amount equal to or greater  
16 than 2 times the payer's monthly support amount under a support  
17 order, notify the financial institution **or carrier** and the payer  
18 that the levy is released.

19       (b) If the payer does owe past due support in an amount equal  
20 to or greater than 2 times the payer's monthly support amount  
21 under a support order, but the amount in the notice to levy is  
22 more than the payer owes, notify the payer of the corrected  
23 amount.

24       (c) If the mistake concerns a fact other than those described  
25 in subdivisions (a) and (b), take action appropriate to the  
26 mistake.

27       (3) If the title IV-D agency finds no mistake of fact, the

1 title IV-D agency shall notify the payer or other person with an  
2 interest of that finding.

3 (4) If the payer or other person with an interest disagrees  
4 with the title IV-D agency review determination under this  
5 section, the payer or other person with an interest may challenge  
6 the levy under section 25c by filing an action in the circuit  
7 court that issued a support order that is an underlying basis for  
8 the levy. A payer or other person with an interest must file an  
9 action under this subsection within 21 days after the title IV-D  
10 agency sends notice of its review determination and shall give  
11 the title IV-D agency notice of the action.

12 (5) If an action is not filed in the circuit court within the  
13 time limit required by subsection (4), the title IV-D agency  
14 shall notify the financial institution **or carrier**, directing the  
15 financial institution **or carrier** to act in accordance with the  
16 title IV-D agency review determination under this section. If an  
17 action is filed in the circuit court within the time limit  
18 prescribed in subsection (4), the title IV-D agency shall notify  
19 the financial institution **or carrier**, directing the financial  
20 institution **or carrier** to act in accordance with the court  
21 decision.

22 Sec. 25g. (1) A financial institution **or carrier** that  
23 receives a notice of levy under section 25c shall forward money  
24 in the amount of past due support as stated in the notice, or in  
25 the corrected amount if notified of a corrected amount, to the  
26 state disbursement unit, along with information necessary to  
27 identify the payer as required by the notice.

1           (2) A financial institution **or carrier** shall forward money as  
2 required by subsection (1) no sooner than the next day and no  
3 later than the seventh day after 1 of the following takes place:

4           (a) The financial institution **or carrier** notifies the payer  
5 and the title IV-D agency that the payer's financial assets **or**  
6 **funds** are frozen as required by section 25e and has not received,  
7 within 28 days after the day on which the financial institution  
8 **or carrier** sent the notices, a notice from the title IV-D agency  
9 that the payer or another person with an interest in the  
10 financial assets **or funds** has submitted a challenge to the levy  
11 under section 25f.

12           (b) The financial institution **or carrier** receives, within the  
13 time limit prescribed in subdivision (a), a notice from the title  
14 IV-D agency that the payer or another person with an interest in  
15 the financial assets **or funds** submitted a challenge to the levy  
16 and receives the subsequent title IV-D agency notice required by  
17 section 25f, directing the financial institution **or carrier** to  
18 act in accordance with either the title IV-D agency review  
19 determination or the circuit court decision.

20           (3) If, in order to forward sufficient money to the SDU, the  
21 financial institution must convert 1 or more financial assets to  
22 cash, the financial institution shall execute the conversion,  
23 assessing a resulting fee or other cost or penalty against the  
24 payer. If the payer's financial assets are insufficient to pay  
25 the past due support amount plus resulting fees and other costs  
26 or penalties, the financial institution may deduct the fees,  
27 costs, and penalties before forwarding the balance of the money.

1           Sec. 25h. (1) If an action is filed in circuit court within  
2 the time limit prescribed in section 25f, the circuit court shall  
3 review the matter de novo. The action is governed by this  
4 section and the Michigan court rules. The circuit court review  
5 is not limited to mistakes of fact.

6           (2) All of the following apply in an action governed by this  
7 section:

8           (a) The circuit court shall only address the issues of the  
9 propriety of the levy and whether the levy amount is correct.

10           (b) The circuit court shall not admit evidence or consider an  
11 issue that is related to custody, parenting time, or the amount  
12 of support under a support order unless that evidence is related  
13 to the levy against a payer's financial assets **or funds**.

14           (c) The circuit court shall not modify a support order. A  
15 court finding regarding a monthly or past due support amount does  
16 not modify the underlying support order.

17           Sec. 25i. (1) If, after a financial institution forwards  
18 money to the state disbursement unit, all of the forwarded money  
19 is returned to the payer due to a mistake of fact or court order,  
20 the title IV-D agency shall reimburse the payer for a fee, cost,  
21 or penalty that the financial institution assessed against the  
22 payer under section 25g. ~~In addition, the~~ **The title** IV-D  
23 agency shall **also** compensate the payer for the amount of interest  
24 that the financial assets **or funds** would have earned had they not  
25 been converted and forwarded to the SDU, to the extent that the  
26 interest can be determined with a reasonable degree of  
27 certainty.

1           (2) If the total amount of past due support the payer owes  
2 under all support orders subject to levy under section 25c is  
3 more than the amount of money a financial institution **or carrier**  
4 forwards the SDU under section 25g, the SDU shall allocate the  
5 money among those support orders by multiplying the total amount  
6 of money forwarded by the percentages arrived at by dividing the  
7 past due support amount under each of those support orders by the  
8 total of the past due support amounts under all of those support  
9 orders.

10           Enacting section 1. This amendatory act takes effect June  
11 1, 2005.