



Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## GARNISHMENT INVOLVING STATE

House Bill 4702 as enrolled  
Public Act 346 of 1994  
Second Analysis (1-27-95)

Sponsor: Rep. Kirk A. Profit  
House Committee: Judiciary  
Senate Committee: Judiciary

### ***THE APPARENT PROBLEM:***

When a creditor wishes to have a Michigan debtor's wages garnished, he or she must first obtain a judgment in the appropriate court, and then a writ of garnishment. Special provisions apply when the state is the garnishee or "garnishee defendant" (that is, when the state is under court order to withhold someone's wages or intercept his or her tax refund on behalf of a creditor). However, it has recently become evident that procedures followed by the Department Treasury in garnishing wages or intercepting garnished tax refunds are not specifically authorized by statute. Legislation has been proposed to revise statute to reflect treasury procedures and to further update and clarify the law.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Revised Judicature Act to revise statutory procedures applying when the state is the garnishee, to enact separate procedures for garnishments of state tax refunds or credits, to defer to court rules regarding various procedural aspects of garnishments (both those involving the state and those not involving the state), to specify distribution of any excess funds remaining after a garnishee is released from liability, and to reinstate a \$1 fee that a plaintiff/creditor is to pay a garnishee at the time a writ of garnishment is served (this fee would not apply to garnishments of periodic payments or garnishments involving the state). The bill would take effect March 1, 1995. Additional details follow.

Service of writ; discovery. With regard to garnishments where the state is the garnishee, the state treasurer is and would continue to be served with a copy of the writ of garnishment. The plaintiff would have to pay to the state a fee of \$6 at the time of service. The bill would delete a requirement that a copy of the proof of service on the defendant be mailed to the state treasurer.

Within seven days after the writ was served on the state, the plaintiff would have to serve the state with any discovery request for information related to the garnishment proceeding that may be in the possession of the Department of Treasury. After receiving a discovery request, the state treasurer would provide only that information in the department's possession that was not otherwise exempted by law from disclosure. The plaintiff would have to pay to the state the reasonable costs incurred in providing the requested information. Following receipt of a writ of garnishment, the Department of Treasury would proceed either according to court rule, if the writ was not for garnishment of a state tax refund or credit, or according to procedures specified by the bill, if the writ was for garnishment of a state tax refund or credit.

Garnishment of tax refunds. The state would intercept a state tax refund or credit that was subject to a writ of garnishment properly served upon the state treasurer. Upon intercepting, the state treasurer would calculate the amount available from the interception to satisfy all or part of the garnishment, and within 90 days after establishing other liability for which the refund may be applied under existing law, both file a verified disclosure with the court and serve copies of the disclosure upon the plaintiff and the defendant. The disclosure would identify the intercepted amount less any setoff, counterclaim, or other demand of the state against the defendant.

Unless notified by the court that objections to the writ had been filed, the state would, within 28 days after filing the disclosure, deposit the amount available for garnishment with either the clerk of the court or the plaintiff's attorney (or, if the plaintiff had no attorney, the plaintiff or the plaintiff's designee). The court would convey the

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deposited amount to the plaintiff's attorney, or, if the plaintiff was not represented by an attorney, to the plaintiff. Objections to a writ of garnishment of a tax refund would have to be filed with the court within 14 days after the date of service of the disclosure on the defendant.

If an interception of a state tax refund or credit did not occur before October 31 of the year during which a garnishment for a state tax refund or credit was to be processed, the state treasurer would not be required to provide a disclosure to the defendant or the court, and the treasurer would not be required to provide the plaintiff with a disclosure unless the plaintiff requested disclosure in writing between November 1 and December 31 of the tax year following the tax year for which a garnishment writ was filed.

The state's liability to the plaintiff would be limited to the amount of the tax refund or credit due the defendant for the period the garnishment writ was in effect, less any setoff, counterclaim, or other demand of the state against the defendant.

Court rules. Michigan court rules not in conflict with statutory provisions on garnishments in which the state was the garnishee would govern a garnishment in which the state was a garnishee.

Periodic garnishments. Current statute provides for a garnishment of periodic payments (such as wages) to be in effect until either the judgment is paid, 91 days has expired, or a court-ordered date has passed. The bill would instead specify that a writ of garnishment of period payments would remain in effect for the period prescribed by court rule. The definition of "period payment" would be amended to explicitly include salary, commissions, and other earnings, as well as wages.

Excess funds. If the court or garnishee possessed money or property under a writ of garnishment after the court released the garnishee from liability under that writ, the court would convey or order the conveyance of the money or property to any of the following, as the court considered appropriate: the defendant's attorney, the defendant (if the defendant was not represented by an attorney), or the plaintiff.

Effectiveness of writs. If the plaintiff failed to provide the garnishee with information sufficient for the garnishee to identify the defendant, and the

garnishee so notified the court (in writing), a writ of garnishment would not be effective.

MCL 600.4011 et al.

### ***FISCAL IMPLICATIONS:***

With regard to an earlier version of the bill, the Senate Fiscal Agency reported that approximately one full-time-equated position would be needed to implement the garnishment program, and that there also would be programming costs associated with the program. (9-20-94)

### ***ARGUMENTS:***

#### ***For:***

The bill would update statute and legitimize various procedures employed by the treasury department in processing garnishments against amounts that the state pays out to state employees, vendors, lottery winners, and taxpayers. It would clarify procedures and deadlines, and would enable the court to remove itself from the role of cashier, allowing the court to order the state to pay a creditor directly.

#### ***Against:***

While special procedures for tax intercepts may be justified, some may dispute whether the state should be treated differently from any other employer in wage garnishments.