

# Legislative Analysis



## COLLECTING ON JUDGMENTS: RESTRICT ASSETS THAT CAN BE GARNISHED

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**House Bill 5680 (Substitute H-2)**  
**Sponsor: Rep. Mary Ann Middaugh**  
**Committee: Judiciary**  
**First Analysis (6-29-04)**

**BRIEF SUMMARY:** The bill would protect money in a bank account that had been earned from personal work or labor from being garnished to satisfy a judgment.

**FISCAL IMPACT:** The bill would have no significant impact on the judiciary.

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

When a creditor prevails against a debtor or when a plaintiff wins a civil action and the defendant is ordered to pay a judgment, the defendant can petition the court to allow him or her to pay the judgment in installments; the petition has to be supported by an affidavit documenting his or her inability to pay the judgment with funds other than those earned as wages. A defendant and plaintiff can also enter into a written agreement regarding installment payments to pay the judgment; these agreements carry the same force of law as a court order. As long as the defendant continues to make the installment payments as specified in the court order, the order acts as a stay against the defendant's wages being garnished. Wages can only be garnished upon written order of a judge.

Reportedly, some creditors have been "double dipping", so to speak, by garnishing money from a person's paycheck once it had been deposited into a bank account, even though the person had made his or her installment payment on the judgment. Legislation has been offered to curtail the ability of creditors to "double dip".

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

House Bill 5680 would amend Chapter 62, entitled "Installment Judgments", of the Revised Judicature Act to protect a defendant's money earned from personal work and labor that was held in a bank account or account with another financial institution from garnishment to repay a judgment as long as the defendant continued to comply with the court order or written agreement between the parties for installment payments. However, this would not apply to money due under a garnishment that had been filed and served before the filing of the petition for installment payments.

If the installment payments were overdue, and after the defendant was sent notice, a judge could issue a written order allowing the garnishment of money or a right to receive money from wages, in an account in a bank or other financial institution, or from a tax refund or credit.

MCL 600.6215, 600.6231, and 600.6245

## **ARGUMENTS:**

### ***For:***

Obviously, if a defendant cannot pay a judgment with other means, he or she will have to pay the judgment in installment payments with income earned from work and labor. The bill, though, will prevent instances of so-called “double dipping” by creditors and plaintiffs whereby they try to garnish money that was earned from work and labor but now held in the defendant’s bank account, even though the installment payment had already been paid by automatic deduction or by the defendant sending a check.

### ***Response:***

As written, the bill may not prevent “double dipping” in all situations. The bill merely says that money due a defendant for personal work and labor or money from personal work and labor that has been deposited in a bank account cannot be garnished if a court has ordered, or the parties agreed in writing, for installment payments to be made. However, under the bill, if the defendant were to fall behind in the installment payments, the court could allow money from wages or money earned from wages that had been deposited in a bank account to be garnished. There is nothing in the bill to prevent both from happening. Therefore, it would appear that the creditor or plaintiff could still garnish money that had been earned from work and then deposited in a bank account as well as garnishing, through automatic deduction, the installment payment amount from the defendant’s paycheck.

The bill should be amended to make clearer that if money due for personal work and labor were garnished by court order, say through automatic deduction, then money from personal work and labor deposited in a bank account after the installment payment had been deducted could not be garnished, or vice versa. This would better accomplish the intent, which, according to committee testimony, was to prevent a creditor/plaintiff from taking money from both the defendant’s paycheck and money from the balance of the paycheck once it was deposited into a bank account.

### ***For:***

The bill would not negate a writ of garnishment filed and served before the defendant petitioned for installment payments, nor would the bill impede the court’s discretion to order the garnishment of wages or money in a bank account earned from wages if the defendant failed to pay the installments on time. This is fair to the creditor or plaintiff, yet still gives some protection to the defendant who pays on time. The bill also would clarify that a written agreement between the parties allowing for installment payments would have to comply with requirements in Section 6225 of the act, and that the agreement would have to be filed with the clerk of the court.

### ***Against:***

Some people would like to see the bill amended to require greater disclosure on the part of the debtor regarding assets and financial responsibilities and allow a creditor to verify, through third parties, the information provided.

***POSITIONS:***

A representative of the Michigan Association of Collection Agencies indicated support for the bill. (6-24-03)

A representative of the Center for Civil Justice indicated support for the bill. (6-24-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.