

HOUSE BILL No. 6634

November 12, 2008, Introduced by Rep. Gaffney and referred to the Committee on Banking and Financial Services.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 4011 (MCL 600.4011), as amended by 1994 PA 346.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4011. (1) Subject to sections 4061 and 4061a ~~and the~~
2 ~~conditions in~~ subsections (2) to ~~(10)~~ **(11)**, the court has power by
3 garnishment to apply the following property or obligation, or both,
4 to the satisfaction of a claim evidenced by contract, judgment of
5 this state, or foreign judgment, whether or not ~~the~~ **THIS** state has
6 jurisdiction over the person against whom the claim is asserted:

7 (a) Personal property belonging to the person against whom the
8 claim is asserted but ~~which~~ **THAT** is in the possession or control of
9 a third person if the third person is subject to the judicial

1 jurisdiction of ~~the~~**THIS** state and the personal property to be
2 applied is within the boundaries of this state.

3 (b) An obligation owed to the person against whom the claim is
4 asserted if the obligor is subject to the judicial jurisdiction of
5 ~~the~~**THIS** state.

6 (2) Except as provided in sections 4061 and 4061a, the court
7 may exercise the jurisdiction granted in this section only in
8 accordance with the Michigan court rules. Except as otherwise
9 provided by sections 4061 and 4061a and the Michigan court rules,
10 ~~the~~**THIS** state and each governmental unit within ~~the~~**THIS** state,
11 including but not limited to a public, municipal, quasi-municipal,
12 or governmental corporation, unincorporated board, public body, or
13 political subdivision, may be proceeded against as a garnishee in
14 the same manner and with the same effect as a proceeding against an
15 individual garnishee.

16 (3) A writ of garnishment may be issued before judgment only
17 as provided in this subsection. Upon ex parte application showing
18 that the person against whom the claim is asserted is not subject
19 to the judicial jurisdiction of ~~the~~**THIS** state or, after diligent
20 effort, cannot be served with process as required to subject the
21 person to the judicial jurisdiction of ~~the~~**THIS** state, a copy of
22 the writ of garnishment shall be served upon the person against
23 whom the claim is made in the same manner as provided by the
24 Michigan court rules for service of process in other civil actions
25 in which personal jurisdiction over the defendant is not required.
26 Upon entry of judgment in the principal action, the obligation or
27 property garnished shall be applied to the satisfaction of the

1 judgment.

2 (4) A garnishment proceeding shall not be commenced against
3 ~~the~~**THIS** state or a governmental unit of ~~the~~**THIS** state, including
4 but not limited to a public, municipal, quasi-municipal, or
5 governmental corporation, unincorporated board, public body, or
6 political subdivision, until after the plaintiff's claim has been
7 reduced to judgment.

8 (5) A garnishment proceeding shall not be commenced against a
9 person for money owing to a defendant on account of labor performed
10 by the defendant until after the plaintiff's claim has been reduced
11 to judgment.

12 (6) A sheriff or other public officer is not subject to
13 garnishment for money or things received or collected by him or her
14 pursuant to an execution or other legal process in ~~the~~-favor of the
15 defendant or because of any money in his or her hands for which he
16 or she is accountable merely as a public officer to the defendant.

17 **(7) A MORTGAGOR IS NOT SUBJECT TO GARNISHMENT FOR MONEY OWED**
18 **UNDER THE MORTGAGE TO THE MORTGAGEE OR A SUCCESSOR OR ASSIGNEE OF**
19 **THE MORTGAGEE.**

20 (8) ~~(7)~~A garnishment proceeding shall not be commenced if the
21 commencement of ~~such a~~**THE** proceeding is forbidden by a statute of
22 this state.

23 (9) ~~(8)~~Except as otherwise provided in sections 4012 and
24 4061, a plaintiff shall pay a fee of \$1.00 to the garnishee at the
25 time the garnishee is served with a writ of garnishment.

26 (10) ~~(9)~~If the court or garnishee possesses money or property
27 pursuant to a writ of garnishment after the court releases the

1 garnishee from liability under that writ, the court shall convey or
2 order the conveyance of the money or property to any of the
3 following, as the court determines appropriate:

4 (a) The defendant's attorney, if the defendant is represented
5 by counsel in the garnishment proceeding.

6 (b) The defendant, if the defendant is not represented by
7 counsel in the garnishment proceeding.

8 (c) The plaintiff.

9 (11) ~~(10)~~—A writ of garnishment is not effective if both of
10 the following conditions are met:

11 (a) The plaintiff fails to provide the garnishee with
12 information sufficient for the garnishee to identify the defendant.

13 (b) The garnishee provides the court with written notice of
14 the insufficiency described in subdivision (a).