

GARNISHMENT

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House Bill 4119 (reported from committee as Substitute H-1)
Sponsor: Rep. Daniela R. Garcia

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4120 (reported with committee amendment)
Sponsor: Rep. Michael D. McCready
Committee: Commerce and Trade

Complete to 2-18-15

BRIEF SUMMARY: The two bills revise provisions in law that deal with garnishment, which is defined as a court order directed to a third party to withhold periodic payments.

FISCAL IMPACT: The bills do not appear to have significant fiscal impact on the state.

THE APPARENT PROBLEM:

The two bills revise provisions in law that deal with garnishment, which is defined in the bills as any court order directed to a third party to withhold periodic payments. For example, an employer (as "garnishee") may be required to garnish wages of an employee to pay debts of that employee to a creditor, or child support payments owed, or tax liabilities. This is a legal process that creditors rely on to get debts paid.

The bills enjoy the support of businesses/employers, who have criticized the current garnishment system on several grounds. Currently, according to testimony, an employer who fails to respond to a legal writ within 14 days can be held liable for the entire debt of the employee. One of the bill sponsors testified that this has led to employers in Michigan "being held liable for debts as small as a few hundred dollars and as large as more than half a million dollars." The proposed legislation addresses this by providing additional notification and more opportunities and time for employers to respond to their legal responsibilities to garnish wages. It also provides opportunities to fix errors

Another complaint is that the fee paid to employers by plaintiffs (creditors) for carrying out these administrative burdens is too small – just \$6 when a garnishment is served. And because a garnishment is in effect only for 182 days (about six months), the garnishment process for an employer-employee begins again every six months. This is a costly administrative burden and increases the risk of inadvertently failing to respond. The bills address this by increasing the fee to \$35 and by making a garnishment stay in effect until the balance of the debt is paid.

These and other changes are seen as improving the garnishment process, so that creditors will still have an avenue for getting debts paid without unduly burdening employers.

THE CONTENT OF THE BILL:

House Bill 4119 would amend Section 4012 of the Revised Judicature Act (MCL 600.4012). It would apply to writs of garnishment issued 90 days after the bill took effect. House Bill 4120 would amend Public Act 390 of 1978 (MCL 408.477), which regulates the payment of wages and fringe benefits to employees. The bill would take effect September 30, 2015.

House Bill 4119 would amend the RJA to specify the following:

A garnishment or a notice of failure would not be valid or enforceable unless the garnishment was served on the garnishee (i.e., the third person, such as an employer, withholding money to pay a debt) in accordance with the Michigan Court Rules.

While a garnishment was in effect, the plaintiff (the person seeking the garnishment) would have to do both of the following:

(1) At least once every six months after the plaintiff received the first payment, provide the garnishee and defendant a statement setting forth the balance remaining on the judgment, including interest and costs. A failure to send a timely statement would not affect the garnishment or any obligation of the garnishee under the garnishment.

(2) Within 21 days after the balance of the judgment had been paid in full, including all interest and costs, provide to the garnishee and defendant a release of garnishment.

Entry of Default against Garnishee (such as an employer)

Under certain circumstances currently, a person who is owed money can seek a default judgment against a garnishee on the grounds that the appropriate withholding is not taking place and then the garnishee may be liable for those amounts. Under House Bill 4119, a plaintiff (a person owed money) could not request that a default be entered against a garnishee (such as an employer) under a garnishment of periodic payments unless both of the following apply:

(1) the garnishee fails to file a disclosure within 14 days after service of the garnishment or fails to perform any other required act, and the plaintiff has served on the garnishee a notice of failure, setting forth the required act or acts that the garnishee has failed to perform; and

(2) the garnishee has failed, within 28 days after the date of service of the notice of failure, to cure the identified failure by mailing to the plaintiff and defendant a disclosure certifying that the garnishee will immediately begin withholding any available funds under the garnishment as provided by statute or court rule or has begun performing any other required act.

The plaintiff would have to attach to a request for entry of a default proof of serving the notice of failure. The plaintiff must send a copy of the request for entry of a default by

certified mail to the garnishee at the garnishee's principal place of business or to the garnishee's registered agent.

Garnishee Could Cure Failure

After entry of a default and before entry of a default judgment, the garnishee could cure the identified failure by mailing to the court, plaintiff, and defendant a disclosure certifying that the garnishee will immediately begin withholding any available funds under the garnishment as provided by statute or court rule or that it had begun performing any other required act.

Request for Default Judgment

After a default had been entered, the plaintiff could file with the court a request for default judgment for an amount not to exceed the full amount of the unpaid judgment, interest, and costs, as stated in the request and garnishment. The plaintiff would have to send a copy of the request for a default judgment by certified mail to the garnishee at the garnishee's principal place of business or to the garnishee's registered agent.

On motion of the garnishee filed within 21 days after entry of a default judgment, the court would do one or more of the following, as applicable:

- Reduce the default judgment to not more than the amount that would have been withheld if the garnishment had been in effect for 56 days, if the garnishee certifies by affidavit that its failure to comply with the garnishment was inadvertent or caused by an administrative error, mistake, or other oversight and that it will immediately begin withholding any available funds or immediately begin performing any other required act.
- Set aside the default judgment, if any of the following circumstances existed: (1) the garnishee was not liable to the defendant for any periodic payments after service of the garnishment; (2) the garnishment, notice of failure, request for entry of a default, or request for default judgment was not properly served or sent as required; or (3) the notice of failure was materially inaccurate or incomplete.

A garnishee could recover an amount for which the garnishee is liable because of the entry of a default judgment from future periodic payments to the defendant as provided under Public Act 390 of 1978 (the bill that House Bill 4120 is amending).

Duration of Writ of Garnishment

Also under House Bill 4119, a garnishment would remain in effect until the balance of the judgment is satisfied. Currently, the RJA says a writ of garnishment is in effect for 182 days. The garnishment of tax refunds is dealt with elsewhere in the statute.

Plaintiff Fee

Also, under House Bill 4119, the fee paid by the plaintiff to the garnishee at the time a garnishment is served would be increased from \$6 to \$35.

House Bill 4120 would amend Public Act 390 of 1978. Under that bill, if an employer paid any part of the employee's debt under Section 4012 of the Revised Judicature Act, the section being amended by House Bill 4119, then the employer could deduct that amount from the employee's regularly scheduled wage payment without the written consent of the employee if all of the following conditions were met:

(a) The employer provided the employee with a written explanation of the deduction at least one pay period before the wage payment affected by the deduction was made.

(b) The deduction was not greater than 15% of the gross wages earned in the pay period in which the deduction was made.

(c) The deduction was made after the employer has made all deductions expressly permitted or required by law or collective bargaining agreement, and after any employee-authorized deduction.

(d) The deduction did not reduce the regularly scheduled gross wages otherwise due the employee to a rate that is less than the greater of either the minimum rate as prescribed by the state minimum wage law or the minimum rate as prescribed by the federal Fair Labor Standards Act.

[Note: Similar bills, House Bills 5390 and 5391, were passed by the House in the 2013-2014 legislative session.]

BACKGROUND INFORMATION:

Similar bills, House Bills 5390 and 5391, were passed by the House in the 2013-2014 legislative session.

ARGUMENTS:

For:

The bills will make improvements sought by businesses/employers in the garnishment process, a process that critics say is currently needlessly complex, costly to administer, and exposes employers to severe liability. As mentioned earlier, the proposed legislation provides employers more opportunities to comply with garnishments so that they will not become liable for employee debts through inadvertence or error. It provides a larger fee to employers for complying with each garnishment. It makes a garnishment last until a debt is paid rather than churning garnishments every six months. Creditors will still be able to collect debts by requiring employers to garnish employee compensation but employers will have more protections.

Against:

A representative of the Michigan Process Servers' Alliance has criticized the proposed legislation because it does not require actual proof of receipt for default proceedings; the organization believes that personal service of default proceedings should be required rather

than relying on certified mail. They have proposed amendments that would require plaintiffs to serve garnishees "in accordance with the Michigan statutes or court rules for service of process." This protects, they say, vital due process rights so that litigants can defend their interests in court.

POSITIONS:

The following indicated support of the bills during committee hearings: The Michigan Chamber of Commerce; the Michigan Creditors Bar Association; the Michigan Restaurant Association; the Michigan Manufacturers Association; the Michigan Retailers Association; the National Federation of Independent Business (NFIB); and the Grand Rapids Area Chamber of Commerce.

The Department of Licensing and Regulatory Affairs indicated neutrality.

The Michigan Process Servers' Alliance indicated opposition to House Bill 4119.

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